

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

**Regular Second Appeal No.6076 of 2014 (O&M)
Date of Decision: August 20, 2015.**

Rakesh Kumar

.....APPELLANT(s).

VERSUS

Chhajju Ram and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Vishal Aggarwal, Advocate
for the appellant (s).

SURINDER GUPTA, J.

Heard.

This is regular second appeal against the concurrent judgments of the Courts below, whereby the suit of the appellant-plaintiff seeking declaration that he has inherited the land in dispute owned by Karnail Singh on the basis of Will dated 15.06.1998, was dismissed. The relief sought by the appellant-plaintiff challenging the sale deed dated 19.04.2004 executed by Chhajju Ram-respondent No.1 out of the suit land, was also declined.

Brief facts of the case are that Chhajju Ram, Karnail Singh and Onkar Singh were three brothers. Appellant-plaintiff Rakesh Kumar is son of Onkar Singh. Karnail Singh died unmarried and issueless on 01.09.1999. Appellant-plaintiff has alleged that during his life time, Karnail Singh executed a Will dated 15.06.1998 as a result of which he became owner of

the suit land.

Both the Courts below discarded the Will holding the same as shrouded by suspicious circumstances. Additional Civil Judge (Senior Division), Pathankot discarded this averment of the appellant that the Will was executed in his favour as he was serving Karnail Singh on the ground that he was in Army and used to come only on annual leave, as such, there is no question of his serving the deceased. The other suspicious circumstances which weighed before the lower Court were that the scribe of the Will alleged to be an Advocate practicing at Gurdaspur was not examined. Even the name of the scribe of the Will was not mentioned on the Will. After the death of Karnail Singh, mutation of inheritance was sanctioned in favour of his brothers Chhajju Ram and Onkar Singh (father of appellant) on the basis of natural succession. The Court below also took note of the fact that in para 5 of the plaint, it was pleaded that Onkar Singh had handed over the Will to the appellant-plaintiff and he kept the same at this house at Gharota Kalan in a trunk. Parveen Devi, wife and power of attorney of appellant-plaintiff has stated in her statement as PW4 that the Will was handed over by Karnail Singh to the plaintiff.

If the version of the appellant-plaintiff be believed, this in no manner explains as to why in the presence of the Will, the mutation of inheritance of deceased Karnail Singh was sanctioned in favour of Chhajju Ram and Onkar Singh, his brothers and why Onkar Singh, father of appellant-plaintiff did not raise the question at the time of mutation that his son has become owner of the estate left by Karnail Singh on the basis of impugned Will. It is not a case where Onkar Singh is contesting the claim of

appellant-plaintiff, he has rather filed written statement admitting his claim. This fact shows that the mutation was sanctioned in due course after the death of Karnail Singh as there was no Will in existence at that time. Otherwise, the appellant-plaintiff would not have remained silent for a period of about six years after the execution of the Will till he filed this suit in the year 2004. PW3 Jagdish Chander, who has been examined as one of the marginal witnesses of the Will has stated that Will was scribed by Advocate Mr. S.S. Saroi at Gurdaspur in his own hand-writing and on the stamp paper purchased by Karnail Singh, while admittedly the Will is on a plain paper and was typed one and not scribed in the hand writing of scribe. No explanation has come forth as to why the scribe was not examined by the appellant-plaintiff.

All the above facts when taken into consideration, coupled with this fact that this Will is unregistered document, which was not propounded or disclosed at the first relevant occasion i.e. at the time of sanctioning of mutation, I am of the considered view that both the Courts below have committed no error of law or fact while holding that the Will is shrouded by suspicious circumstances, thereby calling for no reason to interfere with the findings of the Courts below.

No substantial question of law requiring determination arises in this appeal, which has no merits. Dismissed.

August 20, 2015.
Sachin M.

(SURINDER GUPTA)
JUDGE