

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.2038 of 2011 (O&M)

Date of Decision: October 25th, 2016

Smt.Badho Devi

...Appellant

Versus

Smt.Rama Devi & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Ashok Verma, Advocate,
for the appellant.

Mr.Rajesh Sethi, Advocate,
for respondent Nos.1 & 2.

AMIT RAWAL, J. (Oral)

Appellant-plaintiff is aggrieved of the concurrent findings of the Courts below, whereby the suit seeking declaration of having acquired 1/8th share in the half share of Sona Devi challenging the Will and release deed dated 31.5.2002 in favour of Rama Devi, has been dismissed.

Mr.Ashok Verma, learned counsel for the appellant-plaintiff submits that Sona Devi was owner of half share of two pieces of land measuring 86 kanals 3 marlas and 117 kanals 15 marlas, situated in different Villages, i.e., Ludesar and Nahranwali. The attesting witnesses of the aforementioned Will are none else but Ram Sarup and Rajinder Kumar DW-5 and DW-6. Both the witnesses have not stated as per the provisions of Section 63-C of the Indian Succession Act. Having subjected to cross-examination, their statements have not been consistent with each other, rather Ram Sarup DW-5, in cross-examination, stated that the beneficiary of the Will, namely, Rama Devi had also appended her thumb impression four times on the Will, whereas the document does not reveal such fact. Rajinder

Kumar DW-6, when specifically asked, the question, regarding the illness of Sona Devi, the answer was that her vision was not good and her health was also not in good condition. All these factors lead to an inevitable conclusion that the Will was surrounded by suspicious circumstance. All these facts have not been taken care of by both the Courts below. The Will is lacking reasons with regard to the other two daughters and the son. No doubt, one of the daughter, namely, Muni Devi had supported the defendants, but son Sohan Lal was on the side of the appellant. All these factors point towards the element of suspicion and, therefore, the judgments and decrees being perverse, are liable to be set-aside.

Per-contra, Mr.Rajesh Sethi, learned counsel for respondent-defendant Nos.1 and 2 submits that DW-8 Mahender Pal, Naib Tehsildar had put in appearance and acknowledged the fact that Sona Devi had appeared and the contents of the Will were read over to her and after finding the same to be correct, appended her thumb impressions. Registered document carries a presumption of truth. Ram Sarup DW-5 and Rajinder Kumar DW-6, in cross-examination, have stated, as per the provisions of Section 63-C of the Indian Succession Act. In fact, the appellant-plaintiff has not been able to rebut the evidence led on behalf of the defendants to rule out the element of fraud and misrepresentation and, thus, urges this Court for affirming the findings as concurrent findings cannot be upset unless and until there is gross illegality and perversity.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submission of Mr.Verma, for, execution of the Will is always an indicator/pointer towards the deviation from the line of succession. Rama Devi,

beneficiary, was none else but the daughter of Sona Devi, which fact has also been supported by other documents. It is a case where one daughter and son are supporting each other vis-a-vis other daughter.

I have gone through the records. The statements of both the attesting witnesses in examination-in-chief and cross-examination are consistent. One line here and there cannot make the Court to form an opinion with regard to element of playing fraud and misrepresentation. The entire pith and substance of the cross-examination has to be read.

Mahender Pal DW-8 proved on record that the Will and the release deed were executed by Sona Devi. The contents of the same were explained and read over to her and she, after acknowledging the authenticity and genuineness of the same, appended her thumb impressions. Nothing surfaced in the cross-examination. Registered document carries a presumption of truth. Despite lengthy cross-examination of the witness, appellant-plaintiff has failed to discharge the onus regarding the misrepresentation/fraud having been playing upon Sona Devi. Ingredients of Order 6 Rule 4 CPC are conspicuously absent. All these factors have not been taken into consideration by both the Courts below.

For the foregoing reasons, I do not intend to differ with the concurrent findings, which are based on appreciation of oral and documentary evidence. No substantial question of law arises for determination by this Court.

Appeal stands dismissed.

October 25th, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No