

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

RSA No.310 of 2011 (O&M)

Date of decision : 18.11.2016

Jaswant Singh

...Appellant

Versus

Surinder Kaur and others

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. R.V.S. Chugh, Advocate for the appellant.

Mr. R.K. Singla, Advocate for respondent No.4.

AMIT RAWAL, J. (Oral)

The appellant-defendant No.1 is aggrieved of the concurrent findings of fact, whereby counter claim of the defendant Nos.2 to 4 has been allowed and the Will dated 30.06.2000, has been held to be invalid and illegal.

Mr. R.V.S. Chugh, learned counsel appearing on behalf of appellant-defendant No.1 submits that suit, aforementioned, was filed by Surinder Kaur wife of Mann Singh challenging the aforementioned Will. However, during the pendency of the same, she withdrew it and defendant Nos.2 to 4 setup a counter claim. Appellant-defendant No.1 was residing with Bahal Singh who is the owner of the property and out of love and affection and the duties performed had executed a registered Will,

aforementioned. The Will has been proved through the testimony of Scribe as one of the attesting witness namely Paramjit Kaur DW1 had turned hostile but in cross-examination admitted the execution of the Will. The claim of the defendant Nos.2 to 4 seeking 1/4th share was, thus, totally baseless as defendant No.1 had acquired full ownership being beneficiary of the land. Both the Courts below did not notice the endorsement/acknowledgment of the Registrar on the Will, which carries a presumption of truth and the same has not been rebutted. All these factors, if had been taken into consideration, the suit was liable to be dismissed.

Mr. R.K. Singla, learned counsel appearing on behalf of respondent No.4-Counter Claimant submits that Bahal Singh died on 05.07.2000 i.e. few days after execution of the Will as he was 90 years old and appellant at the relevant point of time was school going, therefore, there can hardly be any services being rendered by him. There was no love and affection for him as real daughters of Bahal Singh have not given any right, title/share and interest in the property. It was a collusive suit at the instance of one of the sister namely Surinder Kaur but on realising the aforementioned fact had set up a counter claim which has been allowed. Concurrent findings of fact cannot be interfered until and unless there is gross illegality and perversity and thus urges this Court for affirming the findings under challenge.

I have heard learned counsel for the parties and appraised the paper book and of the view that arguments of Mr. Chugh, Advocate is not sustainable, for, Paramjit Kaur the sole attesting witnesses examined who did not support the case. Gurmeet Singh has also not deposed as per the

provision of Section 63(c) of the Indian Succession Act. No doubt, the Will is always a deviation from the line of succession but there has to be some rationality and which is always backed of reasons and fall out of certain circumstances, Bahal Singh died after five days of the execution of the Will. The Will do not assign any reasons as to how the counter claimants have been taken his care during their lifetime or at marriage. It appears that defendant No.1 has prevailed upon testator for driving the benefit and, therefore, element of suspicion is not ruled out.

Both the Courts below have examining the aforementioned evidence threadbare and judgments are based on the preponderance of the evidence. I do not intend to differ with the same.

No ground for interference is made out.

Accordingly, present appeal is dismissed.

18.11.2016

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No