

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

**Regular Second Appeal No.2158 of 2016 (O&M)
Date of Decision: July 23, 2016.**

Avtar Singh Bhandari

.....APPELLANT(s).

VERSUS

Sukhwinder Kaur and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Amardeep Singh Gill, Advocate
for the appellant (s).

SURINDER GUPTA, J.

This is appeal against the concurrent judgments of the Courts below, whereby the suit filed by respondent No.1-plaintiff Sukhwinder Kaur seeking the declaration of her title over the house bearing No.FM-123, Model House, Jalandhar in equal shares with appellant-defendant No.1 and her sister Balwinder Kaur, respondent-defendant No.2 was decreed and the defendants were restrained from alienating the suit property more than their share.

2. The dispute pertains to the inheritance of the suit property which was admittedly owned by Kartar Singh, father of the parties. While the plaintiff is claiming inheritance on the basis of natural succession, appellant-defendant No.1 claimed to be exclusive owner of disputed house by propounding a Will dated 06.09.1979, alleged to have been executed by his father in his favour.

3. Both the Courts below discarded the Will terming it as suspicious document. Father of the parties Kartar Singh expired on 02.02.1984. Will is dated 06.09.1979. the facts which weighed before the Courts below while discarding the Will are as follows:-

(i) It is not disputed that the marriage of plaintiff was performed on 03.02.1985 i.e. after the death of her father Kartar Singh. Plaintiff had matrimonial dispute with her husband and filed a petition under Section 125 Cr.P.C. claiming maintenance for herself as well as for her daughters Kavita and Prema. In that case, appellant-defendant No.1 had also appeared as witness in support of version of respondent No.1-plaintiff.

(ii) In the Will, alleged to have been executed on 06.09.1979, the reason mentioned for excluding his daughters by Kartar Singh is that both his daughters i.e. plaintiff Sukhwinder Kaur and defendant No.2 Balwinder Kaur were married and well settled in their matrimonial houses. Both the Courts found this fact mentioned in the Will as suspicious as a father can never make such recital in the Will to disinherit his daughter, who is unmarried. This shows that Will was scribed at a point of time when plaintiff had got married and plaintiff has proved on record that she got married after the death of her father.

(iii) The Will had not seen the light of the day till the filing of the suit by plaintiff in the year 2011 i.e. for a period of more than 30 years. There is no evidence that appellant-defendant No.1 had got the house transferred in his name in the municipal record or had produced the Will anywhere.

4. I have also perused the Will and found that even wife of Kartar

Singh was excluded from inheritance, without giving any reason.

5. Learned counsel for the appellant has argued that both the marginal witnesses have died and one of the witness examined by him had identified the signatures of his father Joginder Singh on the Will.

6. Mere proof of signatures of Joginder Singh on the Will, in no manner, proves it to be a valid document. The date of death of Joginder Singh has not come on file. The possibility that Joginder Singh had connived with the appellant in fabrication of the Will, cannot be ruled out. Even otherwise, the Courts below have rightly observed that the onus is on the propounder of the Will to dispel all the suspicious circumstances. The appellant has utterly failed to discharge the onus so heavily placed on him.

7. Learned counsel for the appellant could not point out that findings of the Courts below are based on misreading of evidence or any of the document on record has either been ignored or wrongly appreciated, calling for any interference in this appeal.

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

Dismissed.

July 23, 2016
Sachin M.

(SURINDER GUPTA)
JUDGE