

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

**RSA No.56 of 2016
Decided on: 11.02.2016**

Pal Singh and othersAppellants

Versus

Kehar SinghRespondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Yogesh Chaudhary, Advocate
for the appellants.

1. *Whether Reporters of local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

REKHA MITTAL J. (Oral)

The present regular second appeal has been directed against the concurrent findings recorded by the Courts below whereby the suit filed by Kehar Singh-respondent was decreed by the trial Court and the judgment and decree passed by the trial Court was affirmed in appeal preferred by the present appellants.

The facts relevant for disposal of the appeal are that the respondent/plaintiff filed a suit for declaration that the Will No.191/3 registered on 16.02.1999 and mutation No.2525 sanctioned on 09.06.2000 and other revenue records based on aforesaid Will are illegal, null and void and the respondent is a

joint owner to the extent of 1/7th share in the suit land as one of the class-I heirs of deceased-Chamela Ram son of Nanak Ram.

The appellants-defendants filed the written statement and in turn raised objections with regard to maintainability of the suit; *locus standi* of the respondent to file the suit; suit being not properly valued and respondent being guilty of concealing true facts. On merits, it is averred that Chamela Ram, owner in possession of the suit property, executed a registered Will out of his free will and consent and he dis-owned the respondent from his movable and immovable assets as the respondent was not on speaking or visiting terms with his father. The Will was executed by the deceased in his sound disposing mind and mutation has been rightly sanctioned on the basis of testamentary succession.

The learned trial Court, on a thoughtful consideration to the rival submissions made by counsel for the parties, in the light of issues framed for determination and evidence adduced by the parties in support of their respective claims, discarded the Will set-up by the appellants and as a result, the suit of the respondent claiming 1/7th share in the suit property on the basis of natural succession was decreed.

The appeal preferred by the appellants did not find favour with the Additional District Judge, Karnal, as the Appellate Court concurred with the findings recorded by the learned trial Court.

Still feeling dis-satisfied, the present appeal has been preferred by the appellants.

Counsel for the appellants contends that the reasons which weighed in the mind of the trial Court to discard the Will propounded by the appellants cannot stand the test of judicial scrutiny nor worthy of affirmation by holding that the Will was surrounded by suspicious circumstances. It is further argued that as Chamela Ram did not have cordial relations with the respondent, who was not on speaking and visiting terms with his father, no serious view can be taken even if, Chamela Ram did not make reference to the respondent in the Will executed by him.

I have heard counsel for the appellants, perused the records and find that the appeal sans merit and warrants dismissal.

The appellants set-up the Will in question in order to deny right of the respondent to succeed to the estate of Chamela Ram on the basis of natural succession. There cannot be any dispute about the settled position in law that it is enjoined upon the party who sets-up a testamentary succession to prove the Will in compliance with the provisions of Section 68 and 69 of the Indian Evidence Act. Equally true is that the propounder of the Will is to dispel all the suspicious circumstances surrounding a Will to satisfy the conscious of the Court that the Will is a true representation of the wish of the deceased as to how his property would be dealt with after his departure from the world. In the case

at hand, the original Will dated 16.02.1999 has not seen the light of day. There is nothing on record suggestive of the fact that the appellants sought permission of the Court to prove the Will by way of secondary evidence under Section 65 of the Evidence Act. As the appellants neither produced the original Will nor sought any permission of the Court to prove the Will by way of secondary evidence, the certified copy of the Will cannot be taken into consideration to accept claim of the appellants that they have become the exclusive owners on the basis of testamentary succession. Counsel for the appellants is not in a position to contend that certified copy of the Will is admissible in evidence without seeking permission of the Court for proving the original Will by way of secondary evidence.

Once the appellants have failed to prove the Will in accordance with law, there is no merit in the contentions of the appellants that the Courts below have either committed any error much less illegality or the present second appeal raises any substantial question of law for adjudication.

For the foregoing reasons, finding no merit, the appeal is dismissed *in limine*. No order as to costs.

(REKHA MITTAL)
JUDGE

11.02.2016
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