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

RSA No.2401 of 2014

Date of decision: January 29, 2016

Anu Sharma

.....Appellant

Versus

Krishna Devi and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. B.D. Sharma, Advocate
for the appellant.

SABINA, J

Respondent No.1 had filed suit for declaration claiming pensionary benefits on account of death of her son Devi Dayal.

The case of respondent No.1, in brief, was that Devi Dayal, her son was working as Senior Fitter Grade-I with Military Engineer Service, Patiala. Devi Dayal died on 07.01.2008 while in service. Devi Dayal was to retire on 31.01.2008. Devi Dayal was unmarried and issueless. Respondent No.1 being mother of Devi Dayal was his only surviving Class-I heir. The retiral benefits of Devi Dayal were liable to be released to respondent No.1. Defendant No.1 Manmohan Nath Sharma had no right, title or interest in the suit.

Defendant No.1 Manmohan Nath Sharma did not

contest the case and was proceeded *ex parte*.

Name of Defendant No.2 was deleted from array of parties vide order dated 09.04.2009.

Appellant moved an application under Order 1 Rule 10 of Code of Civil Procedure, 1908 that she be impleaded as Defendant No.3. Appellant is daughter of Defendant No.1-Manmohan Nath Sharma. The application moved by the appellant was allowed and she was impleaded as Defendant No.3.

Appellant-Defendant No.3 in her written statement averred that Devi Dayal had got married to Swarna alias Bimla Devi and had adopted the children of Bimla Devi from her previous marriage, i.e. son Manmohan Nath Sharma and daughters Manjit Kaur and Karamjit Kaur. Devi Dayal had executed a registered Will dated 10.08.2007 in favour of the appellant. Hence, the appellant was entitled to receive the pensionary benefits of deceased Devi Dayal.

On the pleadings of the parties, following issues were framed by the trial Court:-

- “1. Whether the plaintiff is entitled for declaration as prayed for?OPP
2. Whether the plaintiff is entitled for permanent injunction as prayed for?OPP
3. Whether the plaintiff has no locus standi to file the suit?OPD
4. Whether the suit is not maintainable?OPD

5. Whether the suit is not valued properly for the purpose of court fee?OPD

6. Relief.”

Parties led their evidence in support of their respective pleas.

Trial Court vide judgment/decreed dated 08.09.2012 decreed the suit of the plaintiff-respondent No.1. Appeal filed by the appellant-defendant No.3 against the said judgment/decreed was dismissed by the First Appellate Court vide judgment/decreed dated 03.01.2014. Hence, the present appeal by the appellant-defendant No.3.

I have heard learned counsel for the appellant and have gone through the record available on the file carefully.

In the present case, admittedly, respondent No.1-plaintiff is the mother of deceased Devi Dayal. The case of respondent No.1 was that Devi Dayal had died unmarried and issueless, whereas, the case of the appellant was that Devi Dayal had got married to Bimla Devi and had adopted her children from her earlier marriage. It is further the case of the appellant that Devi Dayal had executed registered Will dated 10.08.2007 in favour of the appellant.

In order to prove the due execution of the Will, appellant examined DW1 Mandeep Sharma.

A Will is a document that speaks of the mind of the deceased after his death. The executant of the Will is though never available for deposing as to under what

circumstances, he had executed the Will. This aspect introduces an element of solemnity in the decision of the question whether the document propounded is proved to be the last Will of the testator. Normally, the onus which lies on the propounder can be taken to be discharged on proof of the essential facts which go into the making of the Will. A Will is required to be proved like any other document. Since the Will is required to be attested and as per Section 68 of the Indian Evidence Act, 1872, at least one attesting witness is required to be examined to prove due execution of the Will. The attesting witness is required to establish that the Will in question was executed by the testator in the presence of attesting witness and they had attested the same in the presence of the testator. In a case where the Will is a registered document then the endorsement made by the Sub Registrar that the Will had been thumb marked or signed by the executant in his presence after it was read over to the executant has a presumption of truth. It is also a settled proposition of law that in connection with Wills execution of which is alleged to be surrounded by suspicious circumstances, the test of satisfaction of judicial conscience has been evolved. That test emphasizes that in determining the question as to whether an instrument produced before the Court is the last Will of the testator, the Court is called upon to decide a solemn question and by

reason of suspicious circumstances, the Court has to be fully satisfied that the Will has been validly executed by the testator.

So far as DW1 Mandeep Sharma is concerned, he was not the attesting witness to the Will. Hence, the Courts below rightly held that the statement of DW1 failed to advance the case of the appellant as the said witness was not competent to depose qua the due execution of the Will.

It has also been noticed by the First Appellate Court that the appellant was granted fifteen opportunities to enable her to conclude her evidence but she failed to do so and ultimately, her evidence was closed by order.

So far the case of the appellant to the effect that Devi Dayal had performed marriage with grandmother Swarna alias Bimla Devi is concerned, the appellant had failed to establish on the file that Devi Dayal had in fact, performed marriage with Swarna alias Bimla Devi.

As per the death certificate Exhibit P6 of Bimla Devi, the name of her husband was mentioned as Surinder Nath. The said certificate was issued on 05.12.2007. In case, Bimla Devi had performed marriage with Devi Dayal, then in her death certificate, name of her husband would have been mentioned as Devi Dayal instead of Surinder Nath.

Hence, the Courts below rightly held that the

appellant had failed to establish the fact that her grandmother Swarna alias Bimla Devi had performed marriage with deceased Devi Dayal or that deceased Devi Dayal had executed Will in her favour.

No substantial question of law arises in this case warranting interference by this Court.

Dismissed.

(SABINA)
JUDGE

January 29, 2016
mahavir