

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

RSA-5721 of 2015 (O&M)

Date of decision: 23.02.2016

Jumma

...Appellant

Versus

Aiman and another

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Pankaj Jain, Advocate
for the appellant.

Jitendra Chauhan, J. (Oral)

CM-14043-44-C-2015

Keeping in view the averments mentioned in the applications, the same are allowed. The delay of 4 days in filing and 28 days in re-filing the appeal is condoned.

Main Case

The present appeal is directed against the judgment and decree dated 26.02.2013, passed by Addl. District Judge, Hisar, whereby the findings recorded by the learned trial Court, vide judgment and decree dated 22.03.2010, were approved.

2. It is contended that both the Courts below have failed to appreciate that the 'Will' alleged to have been executed by Shehzad, the brother of the plaintiff/appellant, is illegal and has not been proved in terms of Section 63(C) of the Indian Succession Act. The attesting witness of the Will DW-4, Mobin is none else but the husband of defendant No.2. Both the Courts below have gravely erred in interpreting the provisions of Explanation 3 of Para 59 of Rattigan's Digest on customary law and in holding that the respondents have fulfilled the conditions of the said provisions. The Will in dispute had been executed by Shehzad in favour of his daughters. The property in dispute was an ancestral property. The parties to the lis belonged to Meo caste, a dominant Agricultural Tribe of Haryana and they are governed by the customary law wherein, the daughters have no right to succession in the property either ancestral or non-ancestral in the hand of Meo proprietor. The said, Shehzad died on 01.06.2012, having no male issue. The plaintiff/appellant is his real brother/collateral, so the alienation of suit property has no legal sanctity. As per customary law, the property of a Meo having no male issue is inherited by his widow and on her death, it is inherited by the nearest collateral of the proprietor who

cannot alienate his ancestral property without legal necessity or consent of the successors. In fact, the Will dated 18.12.2006 was the result of fraud and misrepresentation. The said Shehzad was seriously ill and was bed ridden at the time of execution of Will. The plaintiff had been rendering all types of services to Shehzad during his life time, therefore, the Will in question is illegal, null and void.

5. Heard, the learned counsel for the appellant.

6. It is argued on behalf of the appellant that the Will in question is illegal, null and void. Indisputably, the suit property in hands of Shehzad was ancestral. Said Shehzad died on 01.06.2012, whereas the Will in question was of 18.12.2006. The respondents are the daughters of Shehzad. There is nothing on record to show that the said Will had been obtained by fraud or misrepresentation. Had there been any fraud committed upon Shehzad, he would have objected to the same during his life time. The scribe and the attesting witnesses appeared as DW1 and DW4 had duly testified the authenticity of the Will in question. He died after six years of the Will. The respondents were closely related to the testator being his daughters and thus, both the Courts below have rightly laid emphasis upon

Explanation 3 of Para 59 of Rattigan's digest of customary law which provides that alienation in favour of relations with whom there is some special tie, as by their having been brought up by him or by their being associated with him or by their assisting him in cultivating or rendering him services in the management of land when he himself was incapable of doing so, are generally recognized by custom. The testator was 70-72 years of age at the time of execution. As per copy of ration card Ex.D3, he was residing with his daughter respondent No.1 Aiman. No medical record or any other document had been brought on record to show that said Shehzad was bed ridden or was not in sound state of mind. The Will in question is a registered document. In the considered opinion of this Court, no law point is involved in the present appeal and the view taken by the Courts below is as per record. Accordingly, no interference in the well reasoned judgments is called for.

Dismissed.

23.02.2016

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(JITENDRA CHAUHAN)
JUDGE