

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

**Regular Second Appeal No.5175 of 2014 (O&M)
Date of Decision: March 17, 2016.**

Avtar Singh

.....APPELLANT(s).

VERSUS

Joginder Singh and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Vinod Kumar, Advocate
for the appellant (s).

SURINDER GUPTA, J.

This is second appeal against the judgment passed by Additional Civil Judge (Senior Division), Dasua, whereby the suit filed by appellant along with proforma respondents No.9 and 10 claiming 1/4th share each in the property of their mother Shiv Devi on the basis of Will dated 03.03.1996, was dismissed and Will dated 02.06.1984 in favour of defendant No.1- Joginder Singh was upheld.

2. Learned Additional Civil Judge (Senior Division) has discarded the Will propounded by plaintiffs on two grounds, firstly, that no attesting witness of the Will was examined and secondly, the Will was shrouded by suspicious circumstances as follows:-

(i) There was lot of litigation pending between plaintiff and deceased Shiv Devi.

(ii) Plaintiff Tarlok Singh admitted in his cross-examination that he had filed suit against his mother Shiv Devi.

(iii) He has also filed another suit against his mother Shiv Devi and brother Joginder regarding a tractor.

(iv) He had filed a suit seeking partition of suit property against his mother as well as brother Joginder Singh.

3. Learned Civil Judge observed that litigation of Shiv Devi with plaintiffs was a sufficient factor to oust them from inheritance of the suit property.

4. The first Appellate Court affirmed the findings of learned Additional Civil Judge (Senior Division) and dismissed the appeal.

5. Learned counsel for the appellant has argued that Shiv Devi was mother of appellant. Even if, there was some litigation with her filed by plaintiffs, the mother is always so generous that she could not disinherit her sons from inheritances of her property. This is why she executed Will dated 03.03.1996 giving her property to plaintiffs and her pre-deceased son Harbans Singh. About non-examination of the marginal witness, he has argued that the scribe of the Will was examined, who has stated that Shiv Devi executed the Will and his statement is sufficient to prove the Will as per requirement of Section 68 of Evidence Act.

6. The above submissions of learned counsel for the appellant carry no weight. When a mother is aggrieved due to the litigation with her sons and had executed a Will in favour of her sons with whom she is residing, there cannot be a reason for her to execute a second Will excluding

that son with whom, she was residing. The circumstances, taken note of by

the Courts below, are genuine and sufficient to discard the Will propounded by the plaintiffs. Even otherwise, in the absence of examination of marginal witness or coming forth with any explanation for their non-examination, the Will is not duly proved under Section 68 of Evidence Act as the testimony of scribe is not a testimony of marginal witness and has been rightly discarded by the Courts below.

7. On perusal of the record and judgments of the Courts below, I find no legal or factual infirmity therein calling for any interference.

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

9. Dismissed.

March 17, 2016.
Sachin M.

(SURINDER GUPTA)
JUDGE