

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

**R.S.A No.5177 of 2014 (O&M)
Date of decision :12.02.2016**

Rajender Singh and another

..... Appellants

Versus

Chet Ram and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Abhimanyu Singh, Advocate
for the appellants.

DARSHAN SINGH,J

The present appeal has been preferred against the judgment and decree dated 09.07.2014 passed by the learned Additional District Judge, Palwal, vide which the appeal preferred against the judgment and decree dated 25.05.2011, passed by the learned Civil Judge (Jr. Division), Palwal, has been dismissed.

2. For the sake of convenience, the status of the parties is being mentioned as in the original suit.

3. The appellants-plaintiffs have filed the suit for declaration and permanent injunction on the grounds *inter alia* that Chimman, the father of appellants-plaintiffs and respondent-defendant no.1 was owner in possession of the land in dispute as detailed and described in para no.1 of the plaint situated at village Rajupur Khadar, District Palwal. He was the *karta* of the Joint Hindu Family. The plaintiffs and defendant no.1

were the co-parceners. The land in dispute was ancestral property. Appellants and respondent no.1 have got right, title and interest in the suit property by birth. After the death of Chimman, which occurred on 28.03.2004, the plaintiffs and defendant no.1 were entitled to inherit the 1/3rd share each and they are owners in possession thereof. It is further pleaded that defendant-respondent no.1 procured a fabricated will in favour of defendants no.2 and 3 from their father Chimman and got it registered on 23.02.2004. Deceased-Chimman was 80 years of age. He was suffering from various diseases. He was having a weak eyesight and was hard of hearing. Defendant no.1 took benefit of the weakness of Chimman. He played fraud upon him and procured the Will by way of misrepresentation. The Will was got executed in collusion with the witnesses. Deceased-Chimman was not competent to execute the Will with respect to the ancestral property. The beneficiaries of the Will have also taken the active part in preparing the alleged Will. Thus, they pleaded that the Will in dispute was illegal, null and void. Hence the suit.

4. Respondents contested the suit by filing the written statement pleading therein that deceased-Chimman was residing with them. They were rendering all the necessary services to him in the old age. He was pleased with their services and voluntarily executed the Will dated 02.03.2004 in favour of defendants-respondents no.2 and 3 with respect to his movable and immovable properties. The said Will was got registered in the office of Sub-Registrar, Palwal. As such, respondents-defendants no.2 and 3 have become the absolute owner in possession of the suit property. The defendants denied that plaintiffs were the co-

parceners. It was further pleaded that the plaintiffs have acquired the property of Lajji @ Laxman Dass, the brother of Chimman Lal by virtue of Will regarding his entire estate as he was unmarried and issue-less. Thus, the plaintiffs have already been compensated. With these pleas, they pleaded for dismissal of the suit.

5. From the pleadings of the parties, the following issues were framed by the learned trial Court:-

1. Whether father of plaintiffs and defendant no.1 was owner in possession of ancestral land mentioned in para no.1 of the plaint to the extent of 1/3rd share and 23/549 share?OPP
2. Whether the Will dated 02.03.2004 is forged and fabricated and liable to be set aside?OPP
3. Whether the suit is not maintainable?OPD
4. Whether the plaintiffs are estopped by their own act & conduct from filing the present suit?OPD
5. Relief.

6. On appreciating the material on record and the contentions raised by learned counsel for the parties, the learned trial Court dismissed the suit of the plaintiffs vide impugned judgment and decree dated 25.05.2011.

7. Aggrieved with the aforesaid judgment and decree, the defendants preferred the appeal and the same was dismissed by the learned Additional District Judge, Palwal, vide impugned judgment and decree dated 09.07.2014. Hence this Regular Second Appeal.

8. I have heard Mr. Abhimanyu Singh, Advocate, learned counsel for the appellants and have meticulously gone through the paper book.

9. Initiating the arguments, learned counsel for the appellants

contended that the Will dated 02.03.2004 allegedly executed by Chimman, the father of appellants is surrounded by various suspicious circumstances. He contended that there was no reason to deprive the plaintiffs from succession. Deceased-Chimman was an old man of about 80 years of age. He was having weak eyesight and was hard of hearing. He was also suffering from various diseases. Defendant no. 1 has played a fraud with deceased-Chimman and procured the Will by way of misrepresentation. The beneficiaries have taken the active part in the execution of the Will. He further contended that Chimman was not competent to execute the Will as the land in dispute was the ancestral property in his hands.

10. He further contended that the presence of DW-7 Kuldeep Singh, Advocate at the time of execution of the Will is not established as his name has been written later on in the Will. Thus, he contended that the valid execution of the Will is not established and the plaintiffs shall be entitled to inherit the properties left by deceased-Chimman by way of natural succession.

11. I have duly considered the aforesaid contentions.

12. This Regular Second Appeal has been directed against the concurrent findings of both the learned Courts below. The law is well settled that the scope for interference in the Regular Second Appeal is very limited. The concurrent findings can only be interfered with if the approach of the Courts below is perverse. They have relied upon some inadmissible evidence or have ignored some material evidence or they have misdirected and misinterpreted the evidence or that any substantial

question of law arises.

13. In the instant case, appellants-defendants have challenged the Will dated 02.03.2004 executed by deceased-Chimman in favour of respondents-defendants no.2 and 3, the sons of respondent-defendant no.1 Chet Ram. In order to establish the execution of the Will, respondents-defendants have examined Rakesh Kumar, deed writer as DW-4. They also examined Kuldeep Singh, Advocate as DW-7, who is the attesting witness of the Will. He has deposed that deceased-Chimman affixed his thumb impression on the Will Ex.D-1 in his presence after admitting the same to be correct. He identified his own signatures on the Will Ex.D-1 as attesting witness no.1. As per Section 68 of the Indian Evidence Act, 1872, at least one witness is required to be examined. In the instant case, the requirement of this provision of law has been duly complied with by the defendants-respondents. They have examined DW-7 Kuldeep Singh, Advocate, the attesting witness of the Will to prove the valid execution of the Will. Learned counsel for the appellants has contended that the name of Kuldeep Singh, Advocate was written later on on the Will, so his presence as an attesting witness of the Will was doubtful. But, this plea raised by learned counsel for the appellants is without any substance. Learned trial Court has categorically mentioned that no suggestion was put to DW-7-Kuldeep Singh, Advocate as to whether he had written those words under his signatures on the Will or not. In the absence of any cross-examination on these facts DW-7-Kuldeep Singh, Advocate had no opportunity to explain as to under what circumstances the words “Kuldeep Singh Advocate, Civil Court, Palwal”

has been written under his signatures on the Will. Thus, there is nothing to doubt the presence of DW-7-Kuldeep Singh, Advocate, the attesting witness of the Will at the time of execution of the Will.

14. There is no material on record to establish that deceased-Chimman was not in disposing state of mind on the date of execution of the Will. The plaintiffs have not produced on record any evidence to show that deceased-Chimman was suffering from any mental ailment. Mere old age of the testator and the physical illness cannot establish his mental condition. In the instant case, the appellants have not even produced any evidence to show that the deceased-Chimman was suffering from any physical sickness or disability. Thus, mere old age of the deceased-Chimman is also no ground to render the execution of the Will invalid.

15. The other suspicious circumstance put-forward by learned counsel for the appellants are that deceased-Chimman has died within one month of the date of execution of the Will. Respondent-defendant no.1 Chet Ram has taken the active part in the execution of the Will and the appellants-plaintiffs being the natural heirs have been deprived of succession. Deceased-Chimman was an old man of 80 years of age. Thus, his death within one month of the execution and registration of the Will cannot be considered to be a suspicious circumstance.

16. The presence of the respondent-defendant no.1 Chet Ram at the time of the execution of the Will is also no ground to render the execution of the Will doubtful. The Hon'ble Supreme Court in case **Sridevi Vs. Jayaraja Shetty 2005(1) R.C.R (Civil) 795** has

categorically laid down that mere presence of the beneficiaries at the time of execution of the Will along with other family members of the testator is no ground to suspect the genuineness unless a vital unnatural role is attributed to him. In case **Rur Singh (D) Th. LRS & Ors. Vs. Bachan Kaur 2009(2) R.C.R (Civil) 511**, the Hon'ble Supreme Court has held that the beneficiary was even one of the attesting witness of the Will and that was not considered to be suspicious circumstance. The same principle of law has been laid down by the Hon'ble Apex Court in cases **Palanivelayutham Pillai Vs. Ramachandran, 2000(3) R.C.R (Civil) 175** and **Air Vice Marshal Mahinder Singh Rao (Retd.) Vs. Narender Singh Rao & others 2010(4) PLR 45**. Thus, the presence of respondent-defendant no.1 Chet Ram, the father of the beneficiaries, is also not such a suspicious circumstance to render the execution of the Will invalid.

17. The deprivation of the plaintiffs can also not be considered to be the suspicious circumstance to render the Will in question invalid or illegal as the whole idea behind the execution of the Will is to interfere with the normal line of succession. So, the natural heirs would be debarred in every case of Will, of course it may be that in some cases they are fully debarred and in other cases partially. To support this view reference can be made to cases **Jaswinder Singh and others VS. Kartar Singh and others 2004(3) R.C.R (Civil) 426**, **Sridevi's case (Supra)**, **Savithri & Ors. Vs. Karthyayani Amma & Ors. 2007(4) R.C.R (Civil) 749** and **Rur Singh's case (Supra)**.

18. The deprivation of the appellants in the instant case was even

otherwise justified. This fact is not disputed that the appellants have inherited the property of Lajji, the brother of Chimman by way of will. Thus, in order to make balance in unequal distribution of the property in the family deceased-Chimman might have though fit to deprive the appellants. To support his view reference can be made to case **Sridevi's case (Supra)**.

19. Thus, the execution of the valid Will by deceased-Chimman in favour of respondents no.2 and 3 is fully established. They have become the owner of the suit property by dint of the Will dated 02.03.2004 executed by deceased-Chimman in their favour. Consequently, the appellants are not entitled to claim any right, title or interest in the suit property. So, the concurrent findings arrived at by the learned Courts below requires no interference in the second appeal while exercising the limited powers under Section 100 CPC.

20. Thus, no question of law, much less, the substantial question of law as claimed by the appellant arises in the present appeal.

21. Consequently, the present appeal having no merits is hereby dismissed with no orders as to costs.

February 12, 2016

s.khan

(DARSHAN SINGH)
JUDGE