

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

**1. RSA No.1408 of 2015 (O&M)**

Karnail Singh Aujley and another ... Appellants

Versus

Smt. Mohinderjit Kaur and another ... Respondents

**2. RSA No.2483 of 2015 (O&M)**

Karnail Singh Aujley and another ... Appellants

Versus

Kewal Singh ... Respondent

**Date of Decision: 21.09.2017**

**CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA**

Present: Mr. M.L. Saini, Advocate,  
for the appellants.

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**RAJIV NARAIN RAINA, J.**

This order will dispose of RSA No.1408 of 2015 titled *Karnail Singh Aujley and another v. Smt. Mohinderjit Kaur and another* & RSA No.2483 of 2015 titled *Karnail Singh Aujley and another v. Kewal Singh* as they cover common ground and can conveniently disposed of by joint order under two heads.

**RSA No.1408 of 2015 (O&M)**

Without a shadow of doubt Basant Kaur was the owner of the suit property and could dispose it of as she wanted. She had earlier executed a Will in 1985 bequeathing the suit property to her three sons by excluding

her daughter/s. It was a registered document. However, during the life time she changed her mind and sold the property to Kewal Singh, her third son and his wife Mohinderjit Kaur by executing a registered sale deed in their favour. The rest of her sons, the brothers of the defendants-respondents dissatisfied with their fallen lot filed law suit in the civil court to set aside the Will basing their proprietary rights over the property of their late mother brought in dispute on the strength of the testamentary Will which stood superseded by sale by true owner. The sale deed was challenged by claiming a superior right under the registered Will. This was sadly under a mistaken notion of the law or result of sheer bad legal advice tendered. The very fact that plaintiffs relied on the Will it meant that the mother late Basant Kaur has right to dispose of the property as her own. If it was her own property and in the nature of self acquired nothing stopped her to disregard the Will and sell her property to anyone.

The appellants have failed miserably before the learned trial Court and the learned first appellate Court and have now approached this Court in second appeal. The challenge to the sale deed has been repelled. The simple reason is that the Will takes effect after death and before dying the testator can always change her mind and act according to her wishes by making a sale of the property to some she likes with every right to convey good title to the buyer she chooses, who may be one of her sons to the exclusion of her other children. This can happen in case she needs the money or for any other reason which no one has right to ask about. On facts, the sale here was not without valuable consideration, money having passed from the vendee to the vendor. This act of Basant Kaur nullified the Will

and therefore, property rights cannot devolve by testamentary succession in favour of the appellants as legal heirs. The Will stands obliterated in the eye of law.

I would, therefore, find absolutely no reason to differ with the perfectly proper view taken on the settled legal position and the findings of the Courts below are unassailable and accordingly I would dismiss the appeal in limine.

**RSA No.2483 of 2015 (O&M)**

The legal principle applied in the dismissal of the appeal (Supra) applies to this case also since late Basant Kaur transferred part of the suit land separately to Mohinderjit Kaur, the wife of Kewal Singh son of vendor by a registered sale deed *inter vivos* and accordingly there is no material or visible difference between the two cases involving the two sale deeds, one to one son and his wife and the other exclusively to the wife and therefore and the present accompanying appeal deserves to meet the same fate.

As a result, this appeal also fails and is dismissed.

**(RAJIV NARAIN RAINA)**  
**JUDGE**

**21.09.2017**  
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*Whether speaking/reasoned*                      *Yes*

*Whether reportable*                              *No*