

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.5968 of 2015 (O&M)

Date of Decision: 29.11.2017

Shanti Devi and others

... Appellants

Versus

Dharam Pal and others

... Respondents

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

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

RAJIV NARAIN RAINA, J.

1. This is defendants' second appeal.
2. The plaintiffs have succeeded in both the Courts discarding the testamentary Will dated November 09, 1987 as not valid and genuine and resultantly the mutation entered on September 14, 2004 has been set aside.
3. Both Courts are doubtful whether testator Mela Ram executed the Will Ex.DW1/A dated November 09, 1987 although it was registered on the same day. The reasons for this conclusion are many suspicious circumstances surrounding the making of the will and the conduct of the beneficiary Faqir Chand, son of the testator keeping mum for years together. Mela Ram had three sons and four daughters. No reason was given by Mela Ram in his will for exclusion of his two other sons or his daughters and

preferring one of his sons over the other siblings.

4. The defendants/appellants failed to show that late Mela Ram had anything against his excluded sons and the other legal heirs. Beneficiary Faqir Chand died on June 02, 2003. From November 09, 1987 till the date of death and about two years thereafter, the defendants did not propound the Will in any civil proceedings claiming rights thereunder. Silence from May 18, 1989, the date of death of Mela Ram, and thereafter is a circumstance held against the defendants when throughout the will was not acted upon. The plaintiffs were the excluded sons and daughters of Mela Ram claiming ownership by Hindu succession and inheritance. The testator Mela Ram thumb marked the Will. The defendants did not lead evidence of a finger print expert to establish that the thumb mark of Mela Ram on the Will was genuine. This is also a material circumstance against the defendants in the matter of succession to the suit property.

5. The fard Jamabandis of the year 1997-98 and Khasra Girdawaris of the years 1993-94 to 2002-03 reveal the name of late Mela Ram as the common ancestor of the parties and this was sufficient proof of joint possession till the disputed mutation was sanctioned on September 14, 2004. The suit was filed on May 18, 2005. The cumulative effect of all the surrounding circumstances indicates that the Will was not a genuine document and thus could not be relied upon by Faqir Chand and his LRs to claim title to the suit property.

6. I have no occasion to disturb the view taken by both the Courts below on the evidence in not placing reliance on the Will and leaving the rights in the disputed property to flow from natural succession. No question

of law arises for consideration in second appeal. The appeal is accordingly dismissed.

(RAJIV NARAIN RAINA)
JUDGE

29.11.2017
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Whether speaking/reasoned *Yes*

Whether reportable *No*