

In the High Court of Punjab and Haryana at Chandigarh

Regular Second Appeal No. 2866 of 2017 (O&M)
Date of Decision: 25.5.2017

Ram Kishan and another

.....Appellants

Versus

Shakuntla alias Babali

.....Respondent

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Neeraj Kumar, Advocate
for the appellants.

ANITA CHAUDHRY, J

CM-7145-C-2017

Application is allowed for the reasons stated therein.

Delay of 346 days in filing the appeal is condoned.

RSA-2866-2017 (O&M)

This is the plaintiffs' second appeal aggrieved by the dismissal of the suit and the appeal.

Essential facts first. The plaintiff claimed 2/3rd share in the house in dispute. It was pleaded that the property was owned by their mother namely Ram Dei who had died in March 2001 leaving the plaintiffs and defendant as the legal heirs. It was pleaded that the defendant was threatening to alienate the property and therefore suit for declaration and permanent injunction was filed.

The defendant took the plea that the property was purchased by the mother and she had executed a Will on 30.1.2001 and the property had devolved on her after her death. It was pleaded that the plaintiffs broke the

lock of the house and took the possession of the house in August 2009 and they were in unlawful possession. She also filed a counter claim seeking possession.

Both the sides were given opportunity to lead evidence. The defendants in order to prove the Will examined the scribe and attesting witnesses. There was no plea that the Will was obtained by fraud. Therefore, no issue was framed nor any evidence was led. The lower Court gave a finding that the Will was validly executed and its execution had been proved. It rejected the plea that the Will was suspicious as the mother had died six days after the execution of the Will. The suit was dismissed and the counter claim was allowed.

An appeal was preferred by the plaintiffs which was dismissed.

I have heard the counsel for the appellants at great length and have gone through the plaint. I find that there is no reference to the Will in the plaint. It is in the replication that a plea was taken that the Will was not executed by the deceased and it did not bear her signatures or thumb impressions and it was a case of collusion between the scribe and the officials of the Sub Registrar's office.

The plaintiffs failed to lead any evidence to show that the Will was a result of fraud or that there was collusion with the scribe and officials of the Sub Registrar's office. The plaintiffs made no effort to get hand writing expert to examine the disputed signatures/thumb impressions. The Will is registered. The scribe or attesting witnesses have deposed in favour of the defendant. There was no evidence that the deceased was not in a sound disposing mind or that she was unwell and could not have executed the Will. The mere fact that she died six days later was not a ground to

reject the Will as suspicious. I find no infirmity in the findings of the Courts below. The findings are affirmed.

The appeal is dismissed in limine.

(ANITA CHAUDHRY)
JUDGE

May 25, 2017
Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	No