

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.5160 of 2017 (O&M)
Date of Decision: 13.11.2017

Kavita

.....Appellant

Vs.

Smt.Khajani Devi and another

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.Neeraj Kumar, Advocate, for the appellant.

RITU BAHRI, J. (ORAL)

CM No.13767-C of 2017

For the reasons stated in the application, delay of 79 days in filing the appeal is condoned.

Application stands disposed of.

Main Case

The present appeal has been filed against the judgment of the trial Court 20.07.2016 and the learned appellate Court dated 23.05.2017 whereby, her suit for declaration with consequential relief of permanent and mandatory injunction had been dismissed.

The plaintiff/appellant had filed a suit for seeking declaration to the effect that Will No.381 dated 14.08.2012 was illegal, null and void and arbitrary and no binding upon the rights of the plaintiff. The execution of the Will was duly proved by the defendants. It was pleaded that the husband of the plaintiff met with an accident and due to multiple injuries his kidneys were damaged and suffering from kidneys ailment. The will in favour of registered document. DW-1 Pankaj had appeared and tendered in evidence his duly sworn affidavit Ex.DW1/A alongwith documents Ex.D1 to Ex.D4. Upon his cross examination, he stated that Kuldeep was his real brother and he studied upto class 12th. He stated that deceased Kuldeep got the disputed house through the Will of his grandfather. He acknowledged that Kuldeep got married to plaintiff Kavita. Thereafter a complaint was filed by the

plaintiff-Kavita against her parents-in-law and brother-in-law under the provisions of Domestic Violence Act. He acknowledged that the Kuldeep was suffering from kidney problem and he died due to same. He stated that deceased Kuldeep was got admitted in PGIMS Rohtak by defendant No.1 but he was not aware about the date, month or year. He stated that deceased Kuldeep was discharged from PGIMS, Rohtak on 14.08.2012. He further stated that after taking discharge from the hospital, they went home and from there they went to get executed the Will No.381. He further stated that in the Court premises they met Jai Singh, deed writer for execution of the Will and at the time Om Parkash Nambardar was also present. He stated that on the date of execution of the impugned Will Kuldeep was in a fit state of mind. DW2 Jai Singh deed writer had appeared and tendered in evidence his duly sworn affidavit ExDW2/A. Upon examination he stated that when Kuldeep appeared before him for execution of the Will he was absolutely fine. DW3 Smt.Khajani stepped into the witness box and tendered in evidence her duly sworn affidavit Ex.DW3/A where she reiterated the contents mentioned in the written statement. Upon cross-examination she stated that she was illiterate. She stated that her husband was unemployed and both her sons. She further stated that she was not aware about the person who accompanied Kuldeep to the Court for execution of Will. She stated that when the impugned will was executed, Kuldeep was in a fit statement of mind.

Thereafter, it was argued by the learned counsel for the plaintiff that in view of the oral as well as documentary evidence the plaintiff had successfully proved her case and she was entitled for the relief claimed by her. It was submitted that the defendants No.1 and 2 fraudulently got executed the Will Ex.PA in order to grab the suit property. It was submitted that the plaintiff had cordial relations with deceased Kuldeep and there was no occasion why Kuldeep would have ignored the plaintiff while executing the Will Ex.PA.

After going through the evidence and after perusing the documents, learned trial Court dismissed the case on the ground that it is not proved that the Will was not executed voluntarily or that deceased Kuldeep was not in a fit state of mind because the deceased was merely suffering from kidney problem and even though on 14.08.2012, he was got discharged

from the hospital against medical advice but that does not mean he was mentally unfit. It is surprising to although the plaintiff was relying upon the statement of the Doctor made in the criminal complaint case but no effort was made to summon the Doctor during the course of plaintiff's evidence. It was incumbent upon the plaintiff to summon the Doctor alongwith relevant record so that the other party could have got an opportunity to cross examination the Doctor and it could have been brought on record whether the deceased was in sound state of mind on 14.08.2012 or not.

Learned appellate Court had also dismissed the appeal as plaintiff had failed to prove that the Will dated 14.08.2012 executed by the testator Kuldeep in favour of defendant No.1 was the result of fraud or misrepresentation or the same was not executed by testator with sound and disposing mind or the same was procured by exercising undue influence by the defendants.

So in the light of the discussion, the orders of the Courts below do not reflect any material irregularity or perversity which warranting interference. Hence the present appeal stands dismissed.

(RITU BAHRI)
JUDGE

13.11.2017
anil

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No