

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

**RSA No.2756 of 1997 (O&M)
Date of Order:07.12.2018**

Gurbachan Singh and others

..Appellants

Versus

Union of India and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ankur Soni, Advocate,
for the appellants.

Ms. Neha Jain, Advocate, for
Mr. K.S.Dadwal, Advocate,
for respondent no.4.

ANIL KSHETARPAL, J(Oral)

Plaintiffs-appellants are in the regular second appeal against a small part of the judgment which has gone against them, although, major relief has already been granted.

Both the courts have found that Malooka, who was uncle of the appellants (died issueless). He was allotted 7 kanals and 14 marlas of land by the Central Government. A conveyance deed was executed on 22.1.1973. However, revenue authorities committed a mistake and mutated only land measuring 7 kanals and 4 marlas in place of 7 kanals and 14 marlas which was allotted to Malooka. Malooka executed a Will of the entire property in favour of the plaintiffs dated 13.12.1984. Thereafter, since as per the revenue record Malooka was owner of 7 kanals and 4 marlas, he executed a sale deed in favour of the appellants on 13.02.1985.

Learned trial court as well as the first appellate court have

ignored the Will executed by Malooka, resulting in depriving the appellants of 10 marlas agricultural land, which is the entire dispute between the parties. Learned courts below have given two reasons to ignore the Will:-

- (i) the will was scribed at the residence of the beneficiary;
- (ii) Malooka, the testator, had later on sold 7 kanals 4 marlas to the beneficiaries.

It is not in dispute that both the attesting witnesses of the Will have been examined, namely, Hari Das, PW3 and Kirpa Singh, PW2. It is also not in dispute that Malooka was issueless and therefore used to reside with the appellants. It has further come in evidence that the appellants were serving Malooka and taking care of his needs. In such circumstances, execution of the Will in favour of the appellants who were serving with him and while he used to stay with them, cannot be taken as a suspicious circumstance particularly when he was not having any Class 1 heirs. Rather the sale deed executed on 13.02.1985 clearly proves that Malooka wanted to give entire property to the appellants. It was only because of the reason that mutation was not sanctioned for the entire land, therefore, sale deed was executed with regard to 7 kanals and 4 marlas.

Evidence of both the witnesses prove that the Will has been executed by Malooka. The suspicious circumstances as noticed by the courts below are merely based upon conjectures. In the considered view of this court, the testamentary disposition of the property should not be ordinarily interfered by the courts unless there is some strong suspicion having some solid base which itself makes the execution of the Will doubtful.

As per Section 63 of the Indian Succession Act, 1925, the Will

is not required to be compulsorily registrable. The Will is required to be attested by two marginal witnesses which has been complied with. It is not necessary that the Will must be executed by professional scribe or there is no place designated where the Will must be scribed. A testator can even write his will with his own hand. In the present case, defendants have not produced any evidence which may point out or even suggest that Malooka had not executed the Will.

In view of what has been stated hereinabove, the regular second appeal is allowed.

December 07, 2018
nt

(ANIL KSHETARPAL)
JUDGE

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