

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

**RSA No.3208 of 2011 (O&M)
Date of Order:29.11.2018**

Tej Kaur

..Appellant

Versus

Chhinder Kaur and others

..Respondents

RSA No.3209 of 2011 (O&M)

Tej Kaur

..Appellant

Versus

Chhinder Kaur and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. A.S.Rai, Advocate,
for the appellants.

Ms. Sonia G. Singh, Advocate,
for the respondents.

ANIL KSHETARPAL, J(Oral)

There is an application for additional evidence which shall be considered and discussed while deciding the appeals.

By this judgment, two appeals i.e. Regular Second Appeal No.3208 and 3209 of 2011 shall stand decided as both are arising from the suit and counter claim filed by the defendants decided by a common judgment by the trial court.

Dispute in the present case is with regard to the estate of late

Sh. Surjit Singh, who died on 13.03.2005. Tej Kaur, her widow claims the property on the basis of natural succession. She has also prayed for decree for permanent injunction restraining the defendants from raising construction.

Defendant, who is now represented by his legal representatives, brother of late Sh. Surjit Singh, filed a counter claim claiming that as per registered Will executed on 04.07.1997, he is exclusive owner in possession of the property. He also in the alternative sought possession of the property left by late Sh. Surjit Singh. Registered Will has been proved by examining attesting witness Mukhtiar Singh, DW2, son of the scribe Darshar Singh, who has proved entry of the Will in the register of the scribe at Sr. No.4. Other attesting witness Niranjana Singh had died.

Plaintiff did not step into the witness box and she appeared through attorney holder i.e. Smt. Angrej Kaur. She admitted that Tej Kaur and Surjit Singh, the testator, were residing separately and relationship between Tej Kaur and Surjit Singh were not cordial. Keeping in view the aforesaid evidence, both the courts have dismissed the suit filed by the plaintiff and decreed the counter claim filed by the defendant Nachhattar Singh, brother of the deceased Surjit Singh (Testator).

Through the application for additional evidence, filed before this court, plaintiff now wishes to appear in oral evidence as her own witness and also wants to produce documents proving that she had immersed the ashes of Surjit Singh. The present suit was filed in the year 2005. The litigation has remained pending before the trial as well the first appellate court upto 2010. Plaintiff never made an attempt to appear herself in evidence. Still further evidence of the plaintiff is not going to make any

difference particularly in view of the fact that execution of the registered Will has been proved. Normally, the Will is executed only to deviate the succession of the property from natural succession.

In the present case, it has been recorded in the registered Will that the deceased Surjit Singh has made arrangement of sufficient amount for his wife. The Will bears the photograph of the executant.

Learned counsel for the appellant submitted that Surjit Singh was suffering from cancer and medical record of his treatment has been produced by the plaintiff and therefore, it cannot be said that relationship between the plaintiff and Surjit Singh were strained.

A will executed by a testator is a solemn declaration which can only be ignored by the court if there are certain strong suspicious circumstances which the propounder has failed to explain to the satisfaction of the court. In the present case all the suspicious circumstances which have been pointed out by the plaintiff stands explained by the propounder and discussed by the courts below.

Learned counsel for the appellant has submitted that there was no individual bank account of Tej Kaur, however, he admits that there was a joint bank account of Tej Kaur and Surjit Singh.

Since, plaintiff has not appeared in evidence at appropriate stage, depriving the defendant-counter claimants of an opportunity to cross-examine her, at this stage, plaintiff cannot be permitted to appear in evidence and re-open the trial. Appeal has remained pending in this court for the last 7 years. Application for additional evidence has been moved only on 17.09.2018. It is apparent that the plaintiff is only interested in keeping the litigation alive.

Hence, there is no ground to interfere in the judgments passed by the courts below. There is also no substance in the application for additional evidence.

It may be noted here that counsel for the respondents after instructions from the respondents has made a statement that Smt. Tej Kaur would be permitted to reside in the house in question and the decree qua house shall be executed only after her death.

With these observations, both the appeals are dismissed.

All the miscellaneous applications are disposed of in view of the judgment passed above.

November 29, 2018
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(ANIL KSHETARPAL)
JUDGE

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