

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

114

FAO-1780-2018 (O&M)
Date of Decision : 10.5.2018

Subh Karan and others

..... Appellants

Versus

General Public and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. H.P.Ghuman, Advocate
for the appellants.

AJAY TEWARI, J. (Oral)

CM-6863-CII-2018

This is an application for condonation of 99 days delay in
refiling the appeal.

For the reasons recorded in the application, the same is allowed
and delay of 99 days in refiling the appeal is condoned.

Main Case

This appeal has been filed against the grant of the probate to
the respondent No.2.

The case set up by the respondent No.2 was that her father Ram
Lal was a Gang man (Track man) with Northern Railway Department and
her mother had predeceased her father. She had four brothers and one sister
who were all married and living separately and she alone was living with
her father and was herself 30% disabled. Further that before her father died

on 26.2.2014 he executed a Will dated 17.2.2014 and therefore she moved the instant petition for probate. One attesting witness and the scribe/typist appeared. She also proved that she had been nominated by her father for receiving his retiral dues and in any case being unmarried dependent daughter she alone was entitled to be considered for grant of family pension/compassionate appointment. Probate having been granted, four brothers are before this Court.

Learned counsel for the appellants has argued that there are various suspicious circumstances. First one being that father had not given any reason to exclude them and secondly, having been suffering from cancer the father was not in a fit state of mind at the time of the execution of the alleged 'Will'. The fact that he died within a few days of the execution of the Will also shows that he was not in fit state of mind and the Will was not signed by the typist. Learned counsel has further argued that there was no explanation for not using a regular deed writer and why the Will was not registered though it was stated to have been executed in the Court complex.

As against these facts one has also to see that the 5th sibling, that is the married sister (who would have otherwise have got an equal share with the appellants) chose not to contest the probate application. It has also to be kept in mind that the appellant Prem Chand had accepted that the house in which four brothers were living was constructed on the plot which was purchased by their unemployed mother who had also taken loan for its construction (though he did volunteer that the loan was repaid by four brothers without submitting any evidence thereof). Learned Additional District Judge has considered all these facts and has found that the

preponderance of probability was in favour of the respondent No.2. To my mind also, the mere fact that a person is suffering from last stage abdomen cancer cannot give rise to presumption that his state of mind is not fit. Likewise the fact that a person has died within a few days would also not be inevitably give rise to the conclusion that his state of mind was not fit. It can be equally well argued that it is only when a person is facing the prospect of certain death that he feel it most necessary to make arrangements for his property. Here we have a father whose four sons are living in a house owned and built by his wife. He himself has not made claim on that house and that is why it cannot be a suspicious circumstance that he wanted that his handicapped unmarried daughter gets his retiral dues which considering his Class-IV status in the Indian Railways could not be more than few lakhs. Though I realise that it is a first appeal, the counsel has taken me through the entire evidence and I have read the testimony of the attesting witness and the typist and I find that they were unshaken in their cross examination. They both admittedly had no connection with the respondent No.2.

In the circumstance, no fault can be found with the judgment of the appellate Court. The appeal stands dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

10.5.2018
anuradha

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No