

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

103

RSA-2182-2015 (O&M)

Date of Decision : 16.01.2018

Atma Ram and another

..... Appellants

Versus

Smt. Rameshwari and another

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Sanjiv Gupta, Advocate
for the appellants.

AJAY TEWARI, J. (Oral)

This appeal has been filed against the concurrent judgments of the courts below dismissing the suit filed by the appellants.

The case set up by the appellants was that they were sons of Ganga Bishan (alongwith one sister who was proforma defendant-respondent). They further alleged that after the death of Ganga Bishan the contesting respondent Rameshwari had managed to get the property mutated in her favour even though she had no right, title or interest or relationship with Ganga Bishan and could consequently not succeed to the ancestral property of Ganga Bishan. The stand of the contesting respondent on the other hand was that she was the legally wedded wife of Ganga Bishan; the property was not ancestral in the hands of Ganga Bishan; Ganga Bishan had executed a Will in her favour. In replication the appellants reiterated their case and also mentioned that the alleged marriage which Ganga Bishan may have had with the contesting respondent was invalid because on that

date his wife was alive. It is further pleaded that the Will was obtained as a result of fraud since at the time of execution of Will Ganga Bishan was 90 years old. Both the courts below found that the property was not ancestral in the hands of Ganga Bishan and further that in the Will Ganga Bishan had clearly mentioned about the appellants and proforma respondent and had stated that he had given them adequate share in the property and further found that the Will was valid.

The only argument made by counsel for the appellants is that in fact both the courts have erred in returning finding about the Will in favour of the contesting respondent. He has further pointed out that it was shown to the courts that the Will was a typed written document of two pages. On the first page the signatures of the witnesses appear on both sides but on the second page none of the witnesses has signed and it seems that the second page has been interpolated later because otherwise the signatures of the witnesses would have appeared on the second page also.

Both the courts below, however, held that the contesting respondent had succeeded in proving the genuineness of the Will because she had examined herself, the Registration Clerk, the Reader to the Tehsildar & the Fingerprint Expert who had examined the thumb impression of the deceased. Further a perusal of the Will shows that the bequest had been made on the first page and the second page just contained formal averments. In my opinion, having regard to the contents of the Will, the factors pointed out by the counsel for the appellants would not tilt the preponderance of probability in favour of the appellants.

Appeal is dismissed. No costs.

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

January 16, 2018
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(AJAY TEWARI)
JUDGE

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