

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

-.-

RSA 3847 of 2016 (O&M)
Date of decision: 19.01.2018.

Savinder Kuar

..... Appellant

Versus

Sukhbir Kaur and others

..... Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. H S Baath, Advocate
for the appellant

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Rekha Mittal, J. (Oral)

The present appeal directs challenge against consistent findings recorded by the Courts below whereby suit filed by the appellant seeking declaration that she is co-sharer in possession to the extent of half share in land measuring 21 kanals 10 marlas, detailed in head note of the plaint with consequential relief of permanent injunction against respondents No. 1 and 2 has been dismissed by the trial Court and the appeal preferred by the appellant did not find favour with the Additional District Judge, Amritsar.

Counsel for the appellant would urge that Gurdev Singh (since deceased) son of Gurmeet Singh was co-owner to the extent of half share in the suit land which was jointly purchased by the deceased and his brother Hardev Singh-respondent No. 3. Gurdev Singh did not have cordial relationship with his wife Sukhbir Kaur-respondent No. 1. He executed Will dated 24.07.2000 in favour of the appellant whereby Sukhbir Kaur,

widow and Gurpreet Kaur, minor daughter of deceased Gurdev Singh were excluded from inheritance to the estate of deceased Gurdev Singh who died on 21.04.2001. It is argued with vehemence that the appellant examined Santokh Singh (PW3), an attesting witness to the Will and his testimony was not challenged in cross examination by the contesting defendants which amounts to admission on their part and is sufficient to prove the Will in accordance with the provisions of Section 68 of the Indian Evidence Act. It is further argued that findings recorded by the Courts below negating plea of the appellant qua Will in question suffers from perversity and liable to be set aside. The last submission made by counsel is that both the Courts have wrongly held that suit is the result of collusion between the appellant and contesting respondents when otherwise, the deceased and his wife did not have cordial relationship.

I have heard counsel for the appellant, perused the paper book and records.

The present lis pertains to inheritance to the estate of deceased Gurdev Singh who unfortunately died at a young age of less than 30 years, on 21.04.2001. The appellant is the mother of deceased Gurdev Singh whereas contesting defendants are the widow and daughter of said Gurdev Singh. The appellant claims inheritance to the estate of deceased Gurdev Singh to the exclusion of other Class-I heirs i.e. widow and minor daughter of the deceased by basing her claim on Will dated 24.7.2000. The trial Court framed issues No. 1 and 2 with regard to entitlement for declaration and joint possession as well as permanent injunction, onus whereof was placed upon the appellant. There cannot be any dispute about the settled

position in law that a person who propounds a Will has an obligation in law to prove it as per the provisions of Section 68 or 69 of the Evidence Act, as the case may be. In the case at hand, the appellant examined one of the attesting witnesses of the Will namely Santokh Singh who tendered into evidence his affidavit Ex.PW3/A. A relevant extract from his affidavit in Punjabi (translated in english), reads as follows:-

“That Gurdev Singh in his life time wrote Will dated 24.07.2000 in favour of his mother Savinder Kaur wife of Gurmeet Singh, resident of Village Vallah, Tehsil and District Amritsar. On that, there are my signatures and there are also signatures of Mohan Singh, Numberdar of Village Vallah, Tehsil and District Amritsar and both of us attested the Will in the presence of each other and Mohan Singh, Numberdar affixed his thumb impression and the Will was read over to us.”

Statement of Santokh Singh is conspicuously silent if the Will was read over to testator Gurdev Singh or Gurdev Singh having signed or thumb marked the same in presence of attesting witnesses. As testimony of Santokh Singh is not enough to prove the necessary ingredients to establish that the Will was executed by Gurdev Singh much less in his sound disposing mind, non-cross examination of Santokh Singh by the contesting party is of no significance. In this view of the matter, it can safely be held that the appellant failed to prove the Will in accordance with law. As the appellant has failed to prove the Will, there is no reason to go into the question if the Will is shrouded by suspicious circumstances or otherwise. Resultantly, consistent findings recorded by the Courts below do not give rise to any question of law that needs adjudication in regular second appeal.

The plea that the Courts below held that the suit is the result of collusion between the parties is hardly of any relevance and consequence.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine.

No orders as to costs.

(Rekha Mittal)
Judge

19.01.2018
mohan bimbira

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