

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

**RSA No.4114 of 2016 (O&M)
Date of Decision.16.11.2018**

Jatinder Kaur and anotherAppellants
Vs

Bal Singh and others ...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. K.S. Rekhi, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

The appellants-plaintiffs are aggrieved of the judgment and decree of the lower Appellate Court whereby it had set aside the judgment and decree of the trial Court, which decreed the suit by according status of co-owners regarding the estate of Dalip Singh by holding the Will dated 27.01.2010 propounded by the defendants to be invalid and suffered from suspicious circumstances.

Jatinder Kaur, widow of Rachhpal Singh along with minor daughter claimed joint possession to the extent of 1/10th share in respect of land measuring 16 kanals bearing khewat No.105/136, 1052/1311 and 1053/1312 situated in village Nag, Tehsil and District Amritsar on the premise that it was owned by Dalip Singh, her father-in-law. He died in the year 2010, left behind his widow, defendant No.4, plaintiff as daughter-in-law and defendants No.1 and 2 as sons. They asserted right in the property on the premise that Dalip Singh died intestate.

Defendants opposed the suit denying that Dalip Singh died intestate but propounded the Will dated 27.01.2010. It was

alleged that the mutation as per the order dated 28.12.2010 regarding the inheritance of Dalip Singh was also sanctioned in favour of defendants No.1 and 2. Appeal preferred by the plaintiffs was also dismissed. The aforementioned mutation was on the basis of registered Will and therefore, it cannot be said to be forged and fabricated. The aforementioned orders have attained finality.

On preponderance of evidence, trial Court discarded the Will as noticed above and decreed the suit but the lower Appellate Court reversed the finding of the trial Court.

Mr. Rekhi, learned counsel appearing on behalf of the appellants submitted that the Will on behalf of the respondents-defendants was neither scribed by deed writer despite the fact it was written in the Tehsil Complex nor any attesting witness has been examined. That is not the requirement of law, much less, an unregistered Will. Her husband Rachhpal Singh was murdered in the year 2002 and all his retiral benefits were distributed to the extent of 2/3rd share in favour of the plaintiffs and 1/3rd share in favour of mother of Rachhpal Singh. Defendants No.1 and 2 in order to usurp the property had forged and fabricated the Will of Dalip Singh.

I am afraid aforementioned arguments of Mr. Rekhi are not sustainable, as no direct and cogent evidence to controvert the signatures of Dalip Singh was led. Attesting witness Sant Parkash has been consistent and coherent with regard to contents of Will. Rachhpal Singh died in the year 2002 whereas Dalip Singh in 2010. For all this period, no right was asserted. Inference drawn is that she had already been taken care of. It is common practice amongst the

family members to assert right after demise of common ancestor. It did not make much difference that the Will has not been drafted by scribe or unregistered Will. Even the registered Will are also found to be suffering from suspicious circumstances but each and every finding qua suspicion has to be based upon the direct and cogent evidence, which is conspicuously absent.

In view of the aforementioned facts, I do not intend to subscribe to the arguments of Mr. Rekhi to form a different opinion than the one arrived by the lower Appellate Court, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

November 16, 2018

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No