

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

RSA No.1197 of 2014 (O&M)

Date of decision : 22.05.2018

Hardial Singh

...Appellant

Versus

Tarlochan Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vivek Salathia, Advocate for the appellant.

Mr. Anil Chawla, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

The plaintiff-appellant is in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below.

The dispute in the present case is with respect to the estate of late Smt. Manjit Kaur who died on 27.06.2003. She executed two testamentary documents, first testamentary document is dated 09.04.2003 which deals with the property situated in Village Dialpura wherein she bequeaths her entire property in Village Dialpura in favour of her son Tarlochan and grandson Baljinder Singh (son of pre-deceased son Santokh Singh). Second testamentary document is dated 25.06.2003 through which she bequeaths her property situated in Village Pandori Waraich and Fixed Deposits in the bank to her daughter and son-in-law. The Will has been proved by examining Balwinder Singh, Nambardar who is attesting witness

of both the testamentary documents. The Will dated 09.04.2003 is registered and official from the office of the Sub-Registrar has also been examined.

The Courts have further found that testator-Manjit Kaur, specifically dis-inherited her son Hardial Singh-appellant as wife of Hardial Singh had given injuries to late Smt. Manjit Kaur, the testator.

This Court has heard the learned counsel for the parties at length and with their able assistance gone through the judgments passed by both the Courts below and the records.

Learned counsel for the appellant has submitted as under:-

1. Second testamentary document is only two days before the death as she died on 27.06.2003 particularly when she was admitted in the hospital and, therefore, this suspicious circumstance has been ignored by the Courts.
2. In the second alleged testamentary document dated 25.06.2003, first testamentary document has not been referred to.
3. In the first testamentary document i.e. dated 09.04.2003, testator had excluded her daughter Harjit Kaur and her husband Sawinder Singh but in the second Will, the entire property has been given to them.
4. The evidence that wife of Hardial Singh had given injuries to Late Smt. Manjit Kaur is beyond pleadings.

This Court has considered the submissions. However, do not find any substance.

As regards the first argument, it may be noted that the plaintiff-appellant did not produce any evidence on file to prove that Late Smt. Manjit Kaur was not in her senses or was not in sound disposing mind. In

absence of such evidence, merely because a testator is admitted in hospital does not give rise to suspicion by which a testamentary documents disposition can be ignored.

Second argument of the learned counsel that the first Will has not been disclosed is also liable to be rejected because the first Will is dealing with the property at Village Dialpura whereas second Will is dealing with the property at Village Pandori Waraich and bank deposits which were not dealt with in the first Will. Still further, both the Wills are executed and scribed by the same Document Writer and attested by same attesting witness.

Next argument of the learned counsel is that in the first Will, daughter has been excluded whereas in the second Will daughter and her husband has been given the entire property at Village Pandori Waraich. This argument is to be rejected on the same reasoning as both the testamentary documents are dealing with the entirely different property.

Last argument of the learned counsel is that the evidence is beyond pleadings. In the considered opinion of this Court, the evidence is not required to be pleaded. As per Order 6 Rule 2 CPC, only facts are to be pleaded and that also in a concise form.

A careful reading of both the testamentary documents clearly prove that the testator had made a reference to her son Hardial Singh-appellant and has specifically stated that she does not wish to give any property to him.

Still further, evidence has come on record that wife of Hardial Singh had fought with the late Smt. Manjit Kaur and caused her injuries.

In view of the aforesaid, this Court does not find any good ground to interfere with the concurrent findings of fact arrived at by both the Courts below.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

22.05.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No