

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

**RSA No.6626 of 2016(O&M)
Date of Decision: 10.09.2018**

Gurmej Singh

.....Appellant

Versus

Mukhtiar Singh and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Onkar Singh Batalvi, Advocate
for the appellant.

RAJ MOHAN SINGH, J.

[1]. Defendant No.1 is in regular second appeal against the concurrent judgments and decrees passed by the Courts below in a suit for declaration filed by the plaintiff.

[2]. Plaintiff claimed that he is a co-sharer in possession to the extent of 1/3rd share in the property left by his father Mohkam Singh. Plaintiff is brother of defendants No.1 and 2. After the demise of Mohkam Singh, the parties to the *lis* are entitled to 1/3rd share each in the property left by Mohkam Singh by virtue of inheritance. Defendant No.1 set up Will dated 14.09.1992 executed by his father in his favour. Will in question was found to be executed by Mohkam Singh when the beneficiaries of the Will and attesting witnesses were present in the office of deed writer and in the office of Sub Registrar at the time of registration of the same. At the time of execution of Will

in question, the age of Mohkam Singh was 85 years. The presence of defendant No.1 at the time of execution of Will was held to be a suspicious circumstance for fair execution of Will by Mohkam Singh. In addition to the same, disinheritance of other heirs by Mohkam Singh was also treated to be one of the circumstance creating doubt about the genuineness of the Will. The genuineness of the Will was also doubted in view of the fact that defendant No.1 kept the Will undisclosed for a period of 10 years after the death of Mohkam Singh. On these parameters, the Will was considered to be suspicious.

[3]. Evidently, the alleged Will was executed on 14.09.1992. Even if, defendant No.1 was to seek declaration of said Will after the death of Mohkam Singh, he could have sought declaration by way of declaratory suit for which limitation was three years. Disclosure of Will after 10 years of death of Mohkam Singh would give rise to certify disqualification in claiming declaration as by that time declaratory suit would have become time barred. Cause of action once started to run after the death of Mohkam Singh will not stop by any contingency. It is true that disinheritance of one or two legal heirs in the Will cannot be termed to be a sole suspicion to discard the Will, but it can be treated to be one of the consideration to be read in conjunction with other circumstances. The participation by the

beneficiaries in terms of execution of Will before the scribe and at the time of registration of the Will, would give rise to irresistible conclusion that the beneficiaries remained present through out the execution and registration of the Will along with aged father and he dominated the behaviour of the testator. The Will did not see the light of the day for more than 10 years. The circumstances on record would show that the Will was shrouded with suspicious circumstances, even though the same was drafted by the scribe in the presence of the attesting witnesses.

[4]. The findings recorded by the Courts below cannot be held to be on account of misreading of evidence or suffered with any perversity. No law point worth consideration is involved in the present appeal. This appeal is found to be totally devoid of merits and the same is accordingly dismissed in *limine*.

[5]. Since the main appeal has been dismissed in *limine*, therefore, there is no need to pass any order in the applications for condonation of delay of 65 days in re-filing the appeal and 8 days in filing the appeal and other remaining applications. The same are accordingly disposed of.

September 10, 2018

Prince

Whether reasoned/speaking
Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No
Yes/No