

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

RSA No.1268 of 2017 (O&M)

Date of decision : 16.10.2018

Gurbachan Singh and others

...Appellants

Versus

Naresh Parkash Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vishal Aggarwal, Advocate for the appellants.

Mr. Sanjeev Kumar Bawa, Advocate for the Caveators.

ANIL KSHETARPAL, J. (ORAL)

The plaintiffs-appellants are 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 Harcharan Singh who died on 03.07.2003. The defendants claimed the estate on the basis of the registered testament dated 08.11.2002, whereas the plaintiffs claimed the property on the basis of the registered testament dated 16.10.2000.

Both the Courts after examining the evidence have found that registered testament dated 08.11.2002 has been proved on examination of Raghu Nath, attesting witness who appeared as DW2, apart from examination of Jeet Singh, Scribe.

Learned counsel for the appellants has made following submissions:-

1. The deceased was 95 years of age and of feeble mind. It is proved

from the fact that he within a short span executed three Wills, first in the year 1997, second in the year 2000 and then third in the year 2002.

2. The year of the Will dated 16.10.2000 has been wrongly mentioned as 16.10.2001 in cancellation deed of the Will. Hence, there was no valid cancellation.
3. The last Will executed is unusual as lot of the property had bequeathed in favour of daughter-in-law and grand-daughter.

On the other hand, learned counsel for the respondents-Caveators, has pointed out that when Harcharan Singh was alive, he had filed a criminal complaint against the plaintiffs-appellants as he was being harassed. In the aforesaid complaint, Harcharan Singh has appeared in evidence before the Court and made a statement on 09.12.2002 disclosing to the Court that he has executed a registered Will dated 08.11.2002.

This Court has considered the submissions of learned counsel for the parties.

As regards three Wills executed within a short span, it may be noted that such state of mind would be personal to the Testator and the Court cannot doubt the validity of the registered Will only on the basis of assumption. No evidence has been led to prove that the Executor was of feeble mind.

As regards the age, it has come in evidence that after the execution of the Will dated 08.11.2002, the Testator had appeared in the Court on 09.12.2002 and admitted the correctness of the Will dated 08.11.2002 executed by him.

As regards the argument that the year in the deed of cancellation has been wrongly mentioned, it may be noted that such mistake was only typographical mistake because it is proved on file that there was no Will dated 16.10.2001. In fact, the Will was dated 16.10.2000. In any case, it is the last Will which is enforceable. Even if the deed of cancellation is ignored, still the last Will is in favour of the defendants.

As regard the argument of the learned counsel that bequeathing of some portion of the property in favour of the daughter-in-law and grand-daughter, is unusual, is also to be noticed and simply rejected as it would always depend upon the wishes of the Testator. The daughter-in-law and grand-daughter are members of the family and if the Testator has wished that some property be given to the daughter-in-law and grand-daughter, there is nothing unusual about it. It has been specifically written in the Will that the daughter-in-law and grand-daughter were serving the deceased Testator at the time of the execution of the Will.

Hence, there is no 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.

16.10.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No