

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

**Regular Second Appeal No.2096 of 2017 (O&M)
Date of Decision: April 03, 2018.**

Ajaib Singh and another

.....APPELLANT(s).

VERSUS

Avtar Singh and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Mohit Jaggi, Advocate
for the appellant (s).

SURINDER GUPTA, J.

This regular second appeal has been filed by Ajaib Singh and Sher Singh sons of Mewa Singh against the concurrent judgments of the Courts below decreeing the suit of plaintiff Avtar Singh for declaration that he is owner in possession of 1/8th share of Smt. Gulab Kaur in the suit property on the basis of her registered Will dated 29.12.1984.

Smt. Gulab Kaur, let behind three sons namely Avtar Singh, Ajaib Singh and Sher Singh and one daughter Gural Kaur. While plaintiff claimed inheritance of property in dispute left by Gulab Kaur on the basis of her registered Will dated 29.12.1994, appellants have denied the Will and termed the same as false and fabricated document. Respondent No.3 daughter of the deceased has, however, admitted the Will executed by her mother in favour of plaintiff. She has stated that defendants No.1 and 2 (appellants) have separated themselves from their parents in the year 1973

and started living separately. Father of parties died in the year 1980 and her mother executed Will dated 29.12.1994 in favour of plaintiff in lieu of services rendered by him. She termed the Will as a genuine document.

Both the Courts below held the Will executed by Gulab Kaur as duly proved. The Will was executed in the year 1994 and Gulab Kaur died on 26.03.2006 i.e. after a period of 12 years of execution of the Will. During this period, she has never challenged the Will executed by her.

Perusal of the Will shows that she has given specific reasons for excluding the appellants from inheritance of her estate by reciting in the Will that both the appellants never visit her or take care of her, rather they misbehaved with her. About her daughter, she has stated that after marriage, she is well settled in the family of her in-laws, as such, she does not want to give anything from her estate to her.

Marginal witness of the Will Sarbjit Singh PW3 and its scribe Mangal Sain PW2 have supported the case of the plaintiff-respondent No.1. The appellants could not bring any suspicious circumstance surrounding the Will on record.

Learned counsel for the appellants has argued that plaintiff-respondent No.1 had been frequently going abroad and was living there, as such, it cannot be presumed that he was serving his mother. The recital in the Will to this effect, as such, is not correct.

While appearing as PW1, plaintiff has admitted that he lived abroad from the year 1975 to 1979, 1988 to 1989 and again from 1995 to 1996, Thereafter, he has not gone abroad and is living in his village and looking after his land. The mere fact that plaintiff had gone abroad for

some period, does not suggest that he had not been serving his mother. After the year 1989, he had lived in his village for a period of 5/6 years and again gone abroad for one year. In the Will executed by Gulab Kaur, no share has been given to respondent No.2-Gurpal Kaur but she has no grouse on this score. She had graciously accepted the sentiments of her mother as incorporated in Will dated 29.12.1994 and admitted it as valid and genuine. This corroborates the version of plaintiff-respondent that his mother Gulab Kaur executed a valid Will in his favour. When a mother is reciting in the Will that her sons are not taking care of her, rather abusing her as reason for ignoring them from inheriting her estate, this reflects her feeling and sentiments towards them. The Will in question was scribed by regular deed writer and was duly got registered. The scribe and marginal witness of the Will have fully supported the case of plaintiff-respondent No.1 regarding the execution of Will by her mother.

In view of the facts discussed above and on perusal of the judgments of the Courts below, I find no legal or factual infirmity therein calling for any interference.

No substantial question of law requiring determination arises in this appeal, which has no merits.

Dismissed.

(SURINDER GUPTA)
JUDGE

April 03, 2018.
Sachin M.

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***