

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

**RSA No.1809 of 2018 (O&M)
Date of Decision: 24.07.2018**

Lila Ram @ Leela Ram

... Appellant

Versus

Virender and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Rohit Mittal, Advocate,
for the appellant.

TEJINDER SINGH DHINDSA, J.

Plaintiff/appellant, Leela Ram is in second appeal before this Court.

Plaintiff herein filed a suit for declaration and injunction on the pleadings that deceased Gaza Nand was owner in possession of the suit land measuring 09 kanals 16 marlas and had died issueless. After his death, his five brothers became owners in possession of the estate in equal shares.

It was averred that Gaza Nand died on 03.09.2011 and during his last stages of life was suffering from prolonged illness and as such was not in a proper frame of mind. It was alleged that taking benefit of the health and mental condition of deceased Gaza Nand, defendant No.1 who was his nephew colluded with Ram Niwas, Numberdar and Shiv Lal on 01.09.2011 on the pretext of getting Gaza Nand medical treatment, took him to Narnaul and got a Will bearing Vasika No.162 dated 01.09.2011 registered in the office of Sub Registrar, Narnaul. Case of the appellant was that the Will was never read over to Gaza Nand and it is a result of fraud

and misrepresentation. Declaration as such was sought for the Will in question to be declared a nullity.

Suit was contested by defendant No.1 who filed a written statement accepting deceased Gaza Nand to be the owner of the suit property in his life time. It was denied that Gaza Nand was not in a fit state of mind during his last days. A stand has been taken that defendant had rendered services to Gaza Nand and it is on account of such factual position that the Will dated 01.09.2011 was executed and in which Ram Niwas Numberdar and Shiv Lal were the attesting witnesses that Gaza Nand (since deceased) had himself duly appeared before the concerned Sub Registrar for getting the Will registered.

Trial Court dismissed the suit of the plaintiff on 12.02.2016 and a civil appeal having been preferred has met the same fate vide judgment dated 29.01.2018 passed by the Learned District Judge, Narnaul.

Counsel representing the appellant has argued that the Will dated 01.09.2011 is surrounded by suspicious circumstances. In this regard, it is submitted that Will was registered on 01.09.2011 and Gaza Nand died two days thereafter on 03.09.2011. Further submitted that appellant himself as also defendant Nos.2 to 4 were the real brothers of deceased Gaza Nand and as such the mere fact that the real brothers have been excluded from inheriting any part of the estate shrouds the Will under suspicion. Further submitted that the deceased had been suffering from tuberculosis and as such was not in a healthy and disposing state

of mind on the date of execution of the Will. Contention raised is that the Courts below have overlooked such aspect of the matter and have proceeded to dismiss the suit filed by the appellant on mere conjectures and surmises.

Having heard counsel for the appellant at length, this Court is of the considered view that there is no merit in the instant appeal, the same deserves to be dismissed.

It is a case wherein defendant No.1 i.e. beneficiary of the Will had duly examined DW-2 Ram Niwas and DW-4 Shiv Lal being attesting witnesses to the Will dated 01.09.2011 (Ex. DW-2/A). The scribe, namely, Jai Parkash Bhardwaj also appeared in the witness box as DW-2 and deposed that the Will in question had been read over to the testator as well as attesting witnesses and they had affixed their signatures accepting the same to be correct. The attesting witnesses DW-3 and DW-4 in their evidence tendered affidavits (Ex.DW3-A and Ex.DW-4-A) and deposed that the Will was written in their presence and in the presence of testator Gaza Nand. It was read over to Gaza Nand and was signed by Gaza Nand in presence of the attesting witnesses.

The Courts below have noticed that Gaza Nand had died issueless. Even defendant No.1/respondent was an unmarried person and his parents had also died recently. Defendant No.1/respondent was one of the natural heirs of deceased Gaza Nand. Even though the real brothers had been excluded from inheriting anything from the estate, but the testator Gaza Nand had specifically stated in the Will (Ex.DW2-A) that he

was happy and content on account of services rendered to him by his real nephew Virender/respondent herein.

Even though it was the case set up by the plaintiff/appellant that respondent Virender had taken advantage of the weak health condition and mental state of Gaza Nand and that he was suffering from a prolonged illness in the last stages of his life yet no evidence had been adduced to substantiate such plea. After all appellant as also defendant Nos.2 to 4 were the real brothers of Gaza Nand (since deceased). If it was the case that Gaza Nand had been suffering continuously on account of a prolonged illness, some documentary evidence or other credible evidence in the shape of deposition of independent witnesses could have been led to prove that Gaza Nand prior to his death on 03.09.2011 was suffering from a serious health ailment. No such evidence has been led.

Another crucial aspect that would require notice is that even though plaintiff/appellant is the real brother of the testator Gaza Nand and has assailed the validity of the Will dated 01.09.2011 but his other brothers i.e. defendant Nos.2 to 4 who had also been excluded from the estate of Gaza Nand and as such were equally situated/placed as the appellant have preferred not to even join the lis and as such were proceeded against ex parte. In other words, except for the appellant nobody else has raised a question with regard to the duly registered Will dated 01.09.2011.

Exclusion of a natural heir or some natural heirs from the estate by the propounder of the Will cannot by itself be

treated as a suspicious circumstance. After all, it is only by way of propounding a Will that a normal line of succession can be deviated from. Even the circumstance of death of Gaza Nand on 03.09.2011 i.e. after two days from the execution and registration of the Will dated 01.09.2011 cannot be taken in isolation so as to declare the Will as null and void.

The Courts below have rightfully observed that the beneficiary of the Will must prove such Will beyond reasonable doubt and it would be his duty to remove suspicious circumstances around the Will but at the same time mere ignoring few natural heirs cannot be a ground to infer that Will is not genuine. The admitted factual premise is that the Will in question was duly registered and the testator Gaza Nand had duly appeared before the Sub Registrar's Office, Narnaul for getting such Will registered.

The concurrent view taken by the Courts below as regards the Will in question dated 01.09.2011 to be a valid Will is based on cogent and valid reasons and upon due appreciation of evidence adduced on record.

No interference in the case is warranted.

Appeal does not raise any question of law.

Dismissed.

24.07.2018

vandana

**(TEJINDER SINGH DHINDSA)
JUDGE**

Whether speaking/reasoned
Whether Reportable

Yes
No