

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

RSA No.3100 of 2017 (O&M)

Date of decision:07.12.2018

Bimla Devi (deceased) through LR and another ... Appellants

Vs.

Jarnail Singh and another ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Madan Gupta, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

The appellant-plaintiffs have not been successful in defending the appeal at the instance of the defendants preferred against the judgment and decree of the trial Court whereby suit claiming ownership by way of declaration with regard to estate of of Banarsi Dass.

The appellant-plaintiffs stated that Banarsi Dass was married to Bimla Devi, since deceased. Out of their wedlock, appellant no.2 was born. Banarsi Dass had died intestate and therefore, being class I heir, the property was required to be devolved.

The defendants opposed the suit and propounded the registered Will dated 28.02.2003, whereby, Banarsi Dass had bequeathed his entire property in their favour. The plaintiffs had moved an application for sanctioning of mutation in their favour regarding the property left by Banarsi Dass. During pendency of the proceedings under Section 125 of Cr.

P.C., uncle of Banarsi Dass, namely Gopal Singh gave the land measuring 36 kanals 18 marlas to plaintiff no.1 out of own share and executed a Tamleek Nama on 17.3.1970. It is in these circumstances, Banarsi Dass who had love and affection for the defendants being nephews bequeathed his entire estate.

The trial Court on the basis of aforementioned evidence decreed the suit but the Lower Appellate Court as noticed above, reversed the findings.

Mr. Madan Gupta, learned counsel appearing on behalf of the appellants submitted that Tamleek Nama is not recognized in law. There is no reference of the married daughter in Will. The execution of the Will is deviation from the line of succession, non-reference of the daughter and wife is strong suspicious circumstances. The witnesses of the Will have not been coherent and consistent. One of the witnesses deposed that he attested the Will on account of brotherhood. All these factors weighed in the mind of the trial Court in decreeing the suit by discarding the Will but the Lower Appellate Court erroneously reversed the findings.

I am afraid the aforementioned argument is not sustainable, for, execution of the relinquishment deed dated 17.3.1970 in respect of land measuring 36 kanals 18 marlas in favour of Bimla Devi is not in dispute, much less filing of the petition under Section 125 Cr.P.C. It is evident that there was some discord between Bimla Devi, (since deceased) and Banarsi Dass. It is for all reasons the testator had disinherited the wife with whom he had estranged relationship. No doubt, tamleek nama is not a recognition

of separation or divorce but all these factors weighed in the mind of the testator at the time of execution of the Will. There is compliance of the provisions of Section 68 of Indian Evidence Act, much less 63(c) of Indian Succession Act. Non-mentioning of the name of daughter in the Will would not be a suspicious ground as execution of the Will is deviation from the line of succession.

All these factors weighed in the mind of the Lower Appellate Court being the last Court of facts and law. No ground is made out for interference in the impugned judgment and decree.

The appeal is dismissed.

(AMIT RAWAL)
JUDGE

December 07, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No