

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

RSA No.3108 of 2017 (O&M)

Date of Decision: February 09, 2018

Sham Kaur through her legal representatives ...Appellant

Versus

Hardev Singh and others ...Respondents

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.Simranjeet Singh, Advocate for
the appellant.

HARINDER SINGH SIDHU, J.

This regular second appeal has been filed against the judgment and decree of the courts below.

The appellants are the legal representatives of Sham Kaur - deceased, the plaintiff. She had filed the suit for declaration to the effect that she is owner of 3/26 share of the land detailed in the head-note of the plaint being the only legal heir of her deceased son Tara Singh s/o Bhag Singh, who was the owner in possession of the said land and that the registered Will No.190 dated 27.7.2011, allegedly executed by Tara Singh in favour of defendant Hardev Singh (his brother) was illegal, null and void and not binding upon her rights, being false, forged and a result of fraud. The case set up was that Tara Singh, her son was unmarried and issueless. He died intestate leaving behind the plaintiff as his only legal heir. The Will, on the basis of which the defendant claimed himself to be the owner,

was surrounded by suspicious circumstances. The deceased Tara Singh was

living with the plaintiff, who was looking after him. There was no reason for him to execute a Will in favour of the defendant, ignoring the plaintiff, who was his mother.

The defendant claimed that the Will was executed voluntarily by deceased Tara Singh, without any coercion and pressure, being pleased by the services of the defendant.

In order to prove the Will, the defendant examined Kulwinder Kaur, Member Panchayat of village Chak Heera Singh Wala as DW2, who stated that she personally knew Tara Singh. On 27.7.2011, Tara Singh in her presence, as also in the presence of Bant Singh and Balwinder Singh executed the Will without any pressure and in full command of his senses in favour of his brother Hardev Singh – defendant. The Will was scribed by Sukhdev Singh Sukhladi, who after scribing the same read over its contents to Tara Singh in the presence of all witnesses and Tara Singh admitting the same to be correct, appended his thumb impression on the same. Thereafter, DW2 and Balwinder Singh, Numberdar appended their signatures in the presence of Tara Singh and Bant Singh appended his thumb impressions. Thereafter, the Will was got registered in the office of the Tehsildar.

Bant Singh, attesting witness appeared as DW3 and supported the case of the defendant, and also proved on record the original Will Ex.DW2/D. Ld. Trial Court held that the defendant had duly proved the execution of the Will. The Court also held that even PW1 Gurtej Singh, in his cross-examination has admitted that Tara Singh-deceased died at Rama Mandi, the place of residence of the defendant and his Bhog Ceremony was also held in a Gurudwara at Rama Mandi. Thereby, it was also established

that the deceased was residing with the defendant at Rama Mandi. Further, the claim of the plaintiff that she had been tending to Tara Singh – deceased was negatived, considering the fact that the plaintiff herself was an old lady of 85 years, was bed-ridden and thus was not even in a position to serve her son Tara Singh. Accordingly, the suit was dismissed.

The Learned Lower Appellate Court affirmed the findings of the Trial Court. It held that minor discrepancies in the testimony of the attesting witness, namely i.e. name of one of the attesting witnesses was hand-written and that the Will was typed, whereas, both the witnesses had stated that it was hand-written, would not be a ground to discard the Will, which was a registered document. Nor was the fact that the deceased had 12 brothers and sisters and that he had executed the Will in favour of single brother, be a reason to discard the Will, which had been duly proved.

Concurrent findings of fact have been recorded by the Court below, based on evidence on record.

Ld. Counsel for the appellant has not been able to point out as to how the findings are perverse or otherwise non-sustainable.

No question of law arises for consideration.

Appeal dismissed.

February 09, 2018

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**(HARINDER SINGH SIDHU)
JUDGE**

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No