

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

112

RSA No.4286 of 2017 (O&M)

Date of Decision : 10.08.2018

Smt. Rajwanti @ Raj Rani Kapoor and others

..... Appellants

Versus

Kanchan and another

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present :- Mr. Munish Gupta, Advocate
for the appellant.

AJAY TEWARI, J. (Oral)

This appeal has been filed against the concurrent judgments of the Courts below decreeing a suit filed by the respondents. The respondent No.1 claimed that the property in dispute was originally owned by her father-in-law and, after the death of her father-in-law her husband also died and consequently she was entitled to a share therein.

The case of the appellants on the other hand was that actually the father-in-law had left a Will, as per which shares were allotted to all his legal representatives and as a matter of fact the husband of the respondent No.1 was given more share than what was due to him and this was done by duly registered relinquishment deed and after the relinquishment deed it had been agreed that he would have no share in the property.

Both the Courts below held the Will to be surrounded by suspicious circumstances. They found it strange that if some extra property had been given to the husband of the respondent No.1 by way of registered release deed there was no evidence of any *quid pro quo* or what he may have given up for that. Moreover, the release deed made no mention of the Will. Further the Will did not see the light of day for a period of 8 years, till after the suit was filed. It was in these circumstances that the suit filed by the respondents was decreed and hence the present appeal.

Learned counsel for the appellants has argued that this is a case where the dishonest intention of respondent No.1 is clear from her own conduct. As per him the Will was executed in 1999 and the release deed was executed in the year 2002. The husband of the respondent No.1 died in the year 2007 and never raised any claim about the rest of the property during his life time. Immediately after the death of her husband respondent No.1 not only sold the property which had been released in the favour of her husband within a few months, she also filed the instant suit immediately.

In my considered opinion, this action of respondent No.1 can not be construed to be dishonest on the face of it. Her husband was running a factory and it was not strange for a widow to reach the conclusion that it would not be possible for her to run a business and to sell it off. The mere fact of sale of property to my mind reveals no dishonesty. The circumstances pointed out by the Courts below are also objectively existing and can not be wished away. It also can not be lost sight of that civil cases are decided on the basis of preponderance of probability and not on the basis of proof, which is to say that there is a chance that what the counsel

for the appellants is saying is correct but equally there is a chance that what the respondents were saying is correct and I have not been persuaded to hold that the preponderance of probability does not lie in favour of the respondents.

Appeal is dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

10.08.2018
pooja sharma-I

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No