

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

**RSA No.4403 of 2017 (O&M)
Date of Decision:26.10.2018**

Paramjit Kaur

...Appellant(s)

Versus

Dhanwant Singh and others

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.S.S.Gill, Advocate for the appellant.

ANIL KSHETARPAL, J.

The plaintiff-appellant is in the regular second appeal against the judgment passed by the learned first appellate court, while reversing the judgment and decree passed by the learned trial court.

The dispute in the present case is with respect to the estate of Late Smt.Sampuran Kaur, who was having four sons and one daughter. Harnek Singh, one of the son (father of the plaintiff) shifted to Lebanon and died in the year 1988. Mother of the plaintiff left her in the custody of grand-mother, i.e. Smt.Sampuran Kaur, who took care of the plaintiff and brought her up. Smt.Sampuran Kaur is alleged to have executed a registered Will in favour of his two sons, i.e. Dhanwant Singh and Jang Singh on 6.7.1999 bequeathing her property. The validity of the aforesaid Will has been challenged in the present suit.

The learned first appellate court, after noticing that Kulwant Singh, the attesting witness, has been examined as DW-7, who has proved the Will, in accordance with law and relative of Bachhan Singh, Numberdar, second attesting witness, who has died, has also been examined, apart from

proving the thumb impression of Smt.Sampuran Kaur through comparison with her standard thumb impression on the sale-deed, dismissed the suit filed by the plaintiff, while reversing the judgment passed by the learned trial court.

This Court has heard the learned counsel for the appellant at length.

Learned counsel for the appellant has submitted that Kulwant Singh was lessee under Jang Singh, son of Smt.Sampuran Kaur and therefore, interested witness. He has further submitted that presence of Jang Singh is proved at the time of execution of the Will. He has next submitted that the original sale-deed was not produced from where Handwriting and Fingerprint Expert had compared the thumb impression. He has further submitted that the evidence of the plaintiff has not been appreciated by the court. He has also submitted that no reason has been given as to why the plaintiff has been ignored in the Will. He has lastly submitted that since defendant No.1 has not appeared in the evidence, adverse inference should be drawn against him.

This Court has considered the submissions of the learned counsel for the appellant, however, find no substance therein.

Kulwant Singh, being in cultivating possession of the land, is a natural witness, who has appeared as DW-7 and supported the case at that time Smt.Sampuran Kaur was owner of the land. As regards the presence of one of the beneficiary i.e. Jang Singh, it will be noted that no evidence has been led to prove that the beneficiary in any way influenced the decision of the testator. Mere presence of the beneficiary cannot be the sole ground to

return a finding that the registered Will is surrounded by suspicious circumstances.

As regards the non-production of sale-deed, learned counsel for the appellant admitted that no request was made to the court to get registered sale-deed produced in the court. Once the plaintiff has not made any request, the plaintiff cannot be permitted to raise this argument at the stage of second appeal.

As regards the argument of learned counsel that the evidence led by the plaintiff has not been appreciated, the assertion is factually incorrect, as learned first appellate court has discussed the evidence of all the witnesses produced and after appreciating the evidence passed the judgment.

As regards the argument that no reason has been given to disinherit the plaintiff, it will be sufficient to note that Smt.Sampuran Kaur admittedly took care of the plaintiff when she was a small child, as her father had died and mother had left the matrimonial home. It was Smt. Sampuran Kaur, who brought her up. In such circumstances, Smt.Sampuran Kaur knew that her grand daughter is to be married and would go to another family, therefore, Smt.Sampuran Kaur executed the registered Will in favour of his two sons bequeathing the property.

As regards the last argument that adverse inference is to be drawn against defendant No.1 for non-appearance, it will be noted that defendant No.1 is neither attesting witness nor the executor of the Will. Adverse inference can only be drawn against a party if sufficient evidence is not available on the file.

For the reasons aforementioned, there is no ground to interfere with the findings of learned first appellate court. Consequently, the present regular second appeal is dismissed. Pending application(s), if any, shall also stand disposed of, in terms thereof.

26.10.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No