

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

RSA No.5673 of 2017 (O&M)

Date of decision : 26.07.2018

Beant Kaur (deceased) through LR Harwinderpal Kaur

...Appellant

Versus

Avtar Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Aakash Singla, Advocate and
Ms. Vaishali Singla, Advocate for the appellant.

ANIL KSHETARPAL, J. (ORAL)

CM No.14973-C of 2017

For the reasons stated in the application, which is duly supported by an affidavit, delay of 14 days in filing the present appeal is condoned.

Application is allowed.

Main Case

The plaintiff-appellant is in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below while dismissing the suit filed by the plaintiff for declaration challenging the registered testament executed by Ajaib Singh dated 08.10.2001.

The plaintiff-appellant and the respondent are alleged to be step mother and step son. Ajaib Singh, father of the defendant-Avtar Singh

executed a registered Will bequeathing all his property in favour of his son. It is not in dispute that the plaintiff who was the best witness to support her case set up in the pleadings has not stepped into the witness-box. The suit was filed by the plaintiff through General Power of Attorney, her brother. It is also admitted fact that the plaintiff was residing with her brother when she filed the suit. She was not residing in the village where Ajaib Singh and Avtar Singh use to live. No evidence has been led on file to prove that when Ajaib Singh died on 13.07.2003, the plaintiff was staying with her husband or the family.

Learned counsel for the appellant while referring to minor contradiction with regard to the presence of Avtar Singh, the beneficiary at the time of execution of the Will and also while referring to Section 18 of the Hindu Adoptions and Maintenance Act, 1956, has submitted that the Courts below have committed an error in not returning a finding as to whether the plaintiff is a widow or not. He has further submitted that the plaintiff had a pre-existing right of maintenance in the estate of Ajaib Singh. He has further submitted that since the plaintiff has not been referred in the Will, therefore, the Will is surrounded by the suspicious circumstance.

In the present case, no doubt there is some contradiction in the statement of the attesting witnesses with regard to presence of the beneficiary at the time of execution and registration of the testament, however that would not make any difference because there is no evidence that Avtar Singh had any influence on Ajaib Singh or Ajaib Singh was under any undue influence. One must not forget that Avtar Singh is only son of his father. Still further, the plaintiff, as noticed above, was the best

witness who could have thrown light as to where she was residing when Ajaib Singh died and for how many years, they were living separately. However, she has chosen not to appear in the evidence. Still further, argument raised by the learned counsel that the plaintiff has a prior right of maintenance in the estate of Ajaib Singh is just to be noticed and rejected particularly when it is admitted that such argument was not raised before the Courts below.

In view thereof, there is no ground to interfere with the concurrent findings of fact arrived at by both the Courts below.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

26.07.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No