

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

RSA No.2435 of 2005 (O&M)

Date of decision : 29.01.2019

Tara Chand (deceased) through his LRs

...Appellant

Versus

Ramesh Chand and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Animesh Sharma, Advocate for the appellant.

Mr. Rakesh Gupta, Advocate for respondent No.1.

ANIL KSHETARPAL, J. (ORAL)

CM No.6404-C of 2005

For the reasons stated in the application, which is duly supported by an affidavit, delay of 64 days in refiling the present appeal is condoned.

Application is allowed.

Main case

Plaintiff-appellant is in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below dismissing the suit filed by him for declaration with a consequential relief of permanent injunction.

Dispute is with regard to the estate of late Smt. Krishna Devi, who died on 25.02.1987. The plaintiff had propounded an unregistered Will dated 05.02.1987 allegedly bequeathing the entire property in his favour to the exclusion of other son and daughters.

This Court has heard the learned counsel for the parties at

length and with their able assistance gone through the judgments passed by both the Courts below and the record.

Learned counsel for the appellant has addressed lengthy arguments by referring to various oral evidence in support of his submissions. He has submitted that the execution of the testament has been proved as found by both the Courts below, however, the Courts have ignored the Will only on the basis of suspicious circumstances which does not exist.

On the other hand, learned counsel for the respondents has submitted that there are 3-4 reasons which remained unexplained. He has contended that Tara Chand had also filed a litigation claiming the Will of Bhura Ram, husband of Smt. Krishna Devi and father of the parties to the litigation. The aforesaid Will was in favour of Tara Chand, Ramesh (two sons) and Smt. Krishna Devi, a widow and Radha Bai blind unmarried daughter but the Courts had dismissed the suit. However, in High Court, the appeal was accepted on 06.03.1987, as defendants did not contest the appeal.

He further submitted that no reason has been given as to why Krishna Devi had ignored her blind unmarried daughter i.e. Radha Bai. He further submitted that there are material contradiction in the oral evidence and the propounder has failed to remove all the suspicious circumstances noticed by the Courts below.

Learned counsel appearing for the appellant while trying to explain those suspicious circumstances, has submitted that in the year 1980 when the partition took place, Smt. Krishna Devi had opted to club/join her

share in the property alongwith Tara Chand. He has further submitted that she had died at the residence of Tara Chand and the Doctor who has been examined has not produced any evidence to prove that she was not keeping good health. He has further submitted that wife of Dr. Amrish Kumar is a teacher alongwith Ramesh Kumar.

Although, this Court is not required to re-appreciate the oral evidence in view of the concurrent findings, however, ventured into some of the evidence and re-examined it. The reasons which have been given by the Courts below have not properly explained. Mother who has died after a period of 20 days from the date of alleged execution of an unregistered Will is expected to be more concerned about the well being of her unmarried daughter, however, no reason whatsoever has been given in the Will.

As regards argument of learned counsel that in previous litigation, Radha Bai had got 1/4th property from her father, is also to be noticed and rejected because the aforesaid judgment came after the death of Krishna Devi who died on 25.02.1987.

In view of the aforesaid reasons and also for the reasons found by the Courts below, this Court finds 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.

29.01.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No