

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

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Date of decision: 07.02.2019

1. RSA No.3736 of 2008 (O&M)

Om Devi

..... Appellant

Versus

Chander Bhan and another

..... Respondents

2. RSA No.3737 of 2008 (O&M)

Om Devi

..... Appellant

Versus

Chander Bhan and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. H.P.S. Ghuman, Advocate
for the appellant (in both cases).

Mr. Sanjeev Sharma, Advocate
for the respondents (in both cases).

ANIL KSHETARPAL, J.

Vide this judgment, RSA No.3736 of 2008 and RSA No.3737 of 2008 which are arising from one suit and two first appeals disposed of by a common judgment by the trial Court as well as First Appellate Court, shall stand decided. Counsel for the parties are also agreed that both the appeals can be conveniently disposed of by a common judgment.

Plaintiff-appellant is in the regular second appeal against the judgment passed by the First Appellate Court reversing the judgment of the

trial Court.

Dispute in the present case is with regard to the estate of Sarupa who died in April 1999. As per the case of the respondents-defendants, he executed a registered Will in their favour dated 02.04.1998 Ex.D-1 whereas the plaintiff-appellant who is daughter claims that he died intestate. The execution of the registered Will has been proved by examination of scribe, both the attesting witnesses and Sub-Registrar who registered the Will. It is written in the Will by the testator that he does not have a son (male child) although, he has a daughter. He has recited that he has fulfilled his duty by marrying her. Hence, he executed the Will in favour of his nephews with whom he is residing.

Learned trial Court held that the Will is proved but it is surrounded by suspicious circumstances. However, First Appellate Court has reversed the finding of the trial Court with regard to suspicious circumstances.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below and the record.

Learned counsel for the appellant has submitted that the execution of the Will has not been proved as the witnesses have not stated that the testator had signed in their presence or they had attested the Will as attesting witnesses.

In this respect, one would like to refer to the statement of Suresh Kumar, the scribe who has stated that the Will was read over to the testator as well as to both the attesting witnesses who had thumb marked the Will after admitting correctness thereof. Still further, attesting witness

Atma Ram had appeared In chief, he has stated that Sarupa had executed a Will, which he had also thumb marked it. He has stated that writing took place with regard to the property. When cross examined, he has stated that Sarupa had thumb marked the Will in his presence. Second attesting witness has been examined namely Zile Singh, who has also stated that the Will was read over and explained to the parties and they appeared before the Sub-Registrar who asked and Sarupa, the testator admitted that he is wanting to execute a Will in favour of his nephews. He has further denied the suggestion that he is not a witness to the Will or the photograph of the executor is not affixed on the aforesaid photograph. It will be noted that the Will is a registered Will which also bears the photograph of the executant, correctness whereof is not disputed. The Will has also been registered and executant and attesting witnesses had thumb marked the Will even before the Sub-Registrar. In these circumstances, the argument of learned counsel that the execution of the Will is not proved, is erroneous.

Next argument of learned counsel is with respect to non-production of the register of the scribe which would not be relevant in the facts of the present case particularly when the Will is a registered document. When scribe was asked about the register, he had stated that it was never summoned from him.

As regards next argument of learned counsel that Sarupa was uneducated and therefore, he is not expected to give the detail of the land owned by him is also erroneous because even uneducated person who is owner of an agriculture land and is dependent thereon, knows the details of the land. Still further, only khewat number has been given. The khasra numbers of the land has not been recited in the Will.

Next argument of learned counsel is to the effect that although, in the Will, he has mentioned that he has a daughter but her name has not been mentioned. On careful reading of the Will, it is apparent that the old man (testator) has specifically got recorded that he does not have a male child but he has a female child on who's marriage he has spent the sufficient amount. Merely because, the name has not been mentioned would not make the registered Will suspicious.

In view thereof, there is no ground to interfere.

The pending miscellaneous application, if any in both the appeals, shall stand disposed of accordingly.

Both the appeals are dismissed.

07.02.2019
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No