

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

RSA No.5284 of 2012 (O&M)

Date of Order: 13.02.2019

Balbir Singh

..Appellant

Versus

Devinder Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sapan Dhir, Advocate,
for the appellant.

Mr. Ashish Gupta, Advocate,
for the respondents.

ANIL KSHETARPAL, J(Oral)

Plaintiff-appellant is in the regular second appeal against the concurrent findings of fact arrived at by both the courts below, dismissing suit for declaration with consequential relief of permanent injunction.

Plaintiff claims that the property was Joint Hindu Family Ancestral Coparcenary property and therefore his predecessor late Sh. Chet Singh was not competent to bequeath the property by executing a testament.

Defendants who are also grand sons of late Sh. Chet Singh, defended the suit and pleaded that late Sh. Chet Singh had executed 2 registered testaments, first dated 10.06.1996 and second dated 16.10.1996. It was further pleaded that the plaintiffs and defendant no.3 to 9 had separated and they did not even participate in the last rites of late Sh. Chet Singh.

Both the courts on appreciation of the evidence have found that the testament dated 16.10.1996 has been proved by examining Angrej Singh, the attesting witness as DW3 and scribe Ashok Garg as DW1 in the

Court. The courts have also found that as per the testament some property has also been bequeathed in favour of the plaintiffs.

The courts further examined and found that the property is not proved to be Joint Hindu Family Ancestral Coparcenary property as no excerpt of the revenue record was produced and no revenue official was examined to connect the old khasra numbers with the new khasra numbers as records of consolidation. Khatauni paimaish, khatauni istemal and naksha haqdarwar were just tendered in evidence.

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 appearing for the appellant has submitted that although the testament dated 10.06.1996 is not proved on file, however it recites that late Sh. Chet Singh, the executant, had equal love and affection for all of his sons. He submitted that after a period of 4 months, late Sh. Chet Singh has got recited in the subsequent testament dated 16.10.1996 that the plaintiffs abused him and treated him badly. He submits that the subsequent testament is surrounded by suspicious circumstances as within 4 months the old man cannot be expected to change his stand. He further submitted that late Sh. Chet Singh was old and suffering from illness as admitted by DW3 Angrej Singh as also recited in the testament dated 16.10.1996.

This court has considered the submissions and analyzed the evidence.

Late Sh. Chet Singh, after 4 months of the previous testament had executed a new testament which is the last testament. It is the last

testament which has to operate and previous testaments, if any, would stand superseded. Late Sh. Chet Singh remained alive after execution and registration of the testament dated 16.10.1996 for a period of 3 years. The last wish of late Sh. Chet Singh cannot be ignored by the courts only on the basis of alleged suspicious circumstances which have no foundation. 4 month's time is sufficient time gap in which the testator can change its mind. Once the execution of the testament has been proved and the plaintiff has failed to prove that the last testament executed by the testator was under any undue influence or pressure, the courts are bound to give effect to the last testament. At the cost of repetition, it may be noted that in the last testament also the plaintiff-appellant has been given some part of the property.

As regards illness, it may be noted that Angrej Singh had only admitted that late Sh. Chet Singh was not physically fit being sick. However, physical fitness has normally does not mean that the executor was not mentally alert or suffered from any incapacity to execute the testament. There is no evidence that late Sh. Chet Singh was not mentally fit or alert. Late Sh. Chet Singh was approximately 95 years of age at the time, he executed registered testament dated 16.10.1996 and thereafter he remained alive for 3 years. In such circumstances, the testament cannot be ignored on the ground that late Sh. Chet Singh was sick or not physically fit.

Next argument of learned counsel for the appellant is that the property is Joint Hindu Family Ancestral Coparcenary property.

In this regard, pleadings of the plaintiffs in paragraph 5 of the plaint are extracted as under:-

“5. That in the life time, Chet Singh has divided his

property in four equal shares since 20 years back between the plaintiffs and the father of the defendants No.1 and 2 Jagir Singh and Chet Singh himself. At the time of family partition, it was settled that share of Chet Singh would be divided in three equal parts after the death of Chet Singh.”

It is apparent that the plaintiff-appellant has specifically pleaded that late Sh.Chet Singh was predecessor-in-interest had partitioned the property and divided it into 4 shares. After the division of the property whatever remained with late Sh. Chet Singh was his own property and such property cannot be claimed to be ancestral coparcenary property. Still further both the courts have found that the plaintiffs have failed to prove that the property is Joint Hindu Family Ancestral Coparcenary property.

Learned counsel for the plaintiff-appellant further submitted that the property is ancestral.

The admission of one of the party would not improve the case of the plaintiff. Once the property had been divided and partitioned, the status of the property as coparcenary comes to an end. After partition, the property which has fallen to their respective share is their own property and not coparcenary property unless another coparcenary has come into being.

In view thereof, this court does not find any good ground to interfere with the concurrent findings of fact arrived at by the courts below.

The regular second appeal is dismissed.

February 13, 2019
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No