

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

**RSA No.1912 of 2015 (O&M)
Date of decision:10.01.2019**

Dariyao and others

... Appellants

Vs.

Hukam and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. C.B.Goel, Advocate, for the appellants.

AMIT RAWAL J. (Oral)

The present Regular Second Appeal is directed against the concurrent findings of fact and law, whereby, plaintiffs have not been successful in claiming declaration of ownership of the suit land on the basis of a testamentary document i.e., un-registered Will, Ex.P1 being 60 years old document.

The plaintiffs alleged that Mohriya Singh son of Budha by way of testamentary document had bequeathed the entire property in their favour being sons and brother-in-law. The attesting witnesses and scribe had died. The genesis of the suit was based upon the provisions of Section 90 of Indian Evidence Act.

The defendants opposed the suit and denied the fact that Mohriya Singh had executed a Will. In fact, they were Class-I heirs and there was loss of love and affection. The Will was forged and fabricated document.

Mr. C.B.Goel, learned counsel appearing on behalf of the appellant-plaintiffs submitted that the provisions of Section 90 of Indian Evidence Act, would not apply being the Will 60 years old document but fact of the record is that plaintiffs had been recorded as owners in the revenue record. Even if no injunction was claimed, the trial Court can always mould the relief by protecting the possession. Earlier, the suit was decreed ex parte but on contest, has erroneously been dismissed. Non-registration of the Will is not sine qua non for rejection of the suit.

I am afraid the aforementioned arguments are not sustainable, for, plaintiffs have miserably failed to prove the execution of the Will by Mohriya Singh. No steps have been taken to examine admitted signatures and loss of love and affection towards the defendants being sons and daughters. No doubt, execution of the Will is always deviation from the line of succession but the reasons have to be assigned. The alleged reasons have not conform the conscious of prudent person. The injunction in the absence of any specific relief cannot be granted.

In my view, the findings of fact and law arrived by both the Courts below cannot be said to be suffering from illegality and perversity, much less no substantial question of law arises for adjudication of the present appeal.

Resultantly, the appeal is dismissed.

January 10, 2019

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Whether Speaking/Reasoned

Whether Reportable

(AMIT RAWAL)
JUDGE

Yes/No

Yes/No