

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

120

RSA No.1618 of 2018 (O&M)

Date of decision: 31.01.2019

Sarita Bakshi

..... Appellant

Versus

Pardeep Kumar Sarin and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Mukand Gupta, Advocate
for the appellant.

ANIL KSHETARPAL, J. (ORAL)

Plaintiff-appellant is in the regular second appeal against the concurrent finding of fact arrived at by the Courts below while dismissing the suit filed by the plaintiffs for possession by way of partition of the property and for grant of mesne profits to the tune of Rs.50,000/-.

The parties to the litigation are successor-in-interest of late Sh. Dharam Parkash who is stated to have died on 09.01.2008. Pardeep Kumar, son-defendant has claimed succession on the basis of a testament dated 15.12.2007 which has been proved on file by examining the attesting witness DW-1 Vinod Kapoor and scribe as DW-3. Both the Courts below after appreciating the evidence have held that the execution and attestation of the Will has been proved in accordance with Section 68 of the Evidence Act, 1872 and there are no surrounding suspicious circumstances.

Learned counsel for the appellant-daughter has submitted that the Court has relied upon the statement of Dr. Pardeep Mukhi who

examined the testator on 08.01.2008 and he has stated that the testator was in a semi-conscious state, however, the Courts have misread it that he was fit.

In the considered view of this Court, the statement of Dr. Pardeep Mukhi even if being wrongly noticed by the Court, would not make any difference to the substantive part of the judgment of the Court particularly when the Will was executed around 24 days before the death of the testator.

Learned counsel for the appellant further submitted that late Sh. Dharam Parkash has suffered a hip fracture in November and remained in hospital from 12.11.2007 to 18.11.2007. The fracture of hip may result in incapacitating a person from walking, however, such fracture normally would not have any effect on the mental fitness. This Court has carefully read the testament in which testator not only refers to his pre-deceased wife but also refers to each of the daughter out of whom even one daughter had also died. He has stated that he had solemnized the marriages of both the daughters and had given them sufficient amount in cash as well as ornaments and they are happily settled. It has been mentioned that Sarita is living a prosperous life in her in-laws house. It has further been mentioned that Pardeep Kumar, the only son is obedient and the testator is happy with him. The testament is not bequeathing the property in favour of any outsider.

Learned counsel for the appellant further submitted that the attesting witness as well as scribe have stated that nobody was in the house when the attesting witnesses and the scribe came there and since late Sh. Dharam Parkash-testator had suffered fracture of the hip, therefore, he is not

expected to open the gate. In the considered view, the argument is based upon assumption. A person who suffers fracture of hip after application of plaster can walk with the help of a walker. No evidence has been produced to prove that late Sh. Dharam Parkash was not in a position to walk on 15.12.2007 more than a month after he suffered the fracture of the hip.

In view thereof, there is no scope for interference with the concurrent finding of fact arrived at by the Courts below.

The pending miscellaneous application, if any, shall stand disposed of accordingly.

Appeal is dismissed.

31.01.2019

Dinesh Bansal

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No