

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

**RSA No.3272 of 2017 (O&M)
Date of decision:09.01.2019**

Kashmir Kaur

... Appellant

Vs.

Jagir Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Ashish Aggarwal, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.8001-C of 2017

For the reasons stated in the application which is duly supported by an affidavit, delay of 10 days in filing the appeal, is condoned.

C.M. stands allowed.

RSA No.3272 of 2017 (O&M)

Appellant-plaintiff no.1 has not been successful before both the Courts below in claiming declaration to be owner in possession as co-sharer regarding the estate of Dhir Singh son of Bachan Singh, her brother, who died issueless as he was un-married.

It was alleged that Dhir Singh had brothers and sisters and property in the absence of testamentary required to be devolved as per the natural succession being collateral.

The contesting defendants propounded the registered Will

dated 28.04.2006 of Dhir Singh and claimed the ownership by seeking dismissal of the suit.

The trial Court framed the following issues:-

- “1. Whether plaintiff is entitled to the relief of declaration, as prayed for?OPP*
- 2. Whether plaintiff is entitled to the relief of permanent injunction, as prayed for ?OPP*
- 3. Whether the present suit is not maintainable in the present form?OPD*
- 4. Whether plaintiff has no cause of action or locus standi to file the present suit?OPD*
- 5. Whether plaintiff has not come to the Court with clean hands and has suppressed the material facts from the Court?OPD*
- 6. Whether the present suit is barred under Order 7 Rule 11 9i) (j) CPC and specifically under Section 41 of Specific Relief Act?OPD*
- 7. Whether suit of the plaintiff is bad for mis joinder and non joinder of the necessary party?OPD*
- 8. Relief.”*

Thereafter, following additional issue was framed on 12.04.2013:-

- “1. Whether Dhir Singh executed a genuine and valid Will dated 28.4.2006 in favour of the defendant no.4 only. If so, its*

effect?OPP”

Plaintiff examined herself as PW1 And Jagir Singh as PW2 and closed the evidence. On the other hand, defendants examined 05 (five) witnesses.

Learned counsel appearing on behalf of the appellant-plaintiff no.1 submitted that Will was suffering from suspicious circumstances as the deceased Dhir Singh died at the age of 40. He could not have bequeathed the property in favour of his brothers and their sons.

I am afraid the aforementioned argument is not sustainable as execution of the Will is reflection of deviation from the line of succession. The Will being registered document has been proved through the testimony of attesting witnesses, Surinder Pal, Deed Writer, much less Kanwaljit Singh Clerk of Sub Registrar. No contrary evidence to belie the execution of the Will has been brought on record, thus, the Courts below had no other option but to dismiss the suit.

In view of what has been observed above, the concurrent findings of fact and law 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.

(AMIT RAWAL)
JUDGE

January 09, 2019

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Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No