

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

**RSA No.4668 of 2017 (O&M)
Date of Decision.08.05.2019**

Rati Ram (deceased) through LRs ...Appellant

Vs

Desh Raj ..Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. S.K. Panwar, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

C.M. No.12330-C of 2017

For the reasons stated in the application, delay of 30 days in
filing of the appeal is condoned.

Application is allowed.

RSA No.4668 of 2017

The present regular second appeal is directed at the instance
of the appellant-plaintiff who was not successful in claiming declaration,
injunction and joint possession qua suit property owned by one Resham
widow of Mohan Lal, whose estate after her demise, was in question by
laying challenge to the Will dated 23.08.2006 propounded by defendants
before the Revenue Court.

It was alleged that Resham was of unsound mind and could
not have executed Will. Plaintiff claimed to be the closest relative than
the beneficiaries of Will, who were farthest. She was stated to have
cancelled the Will and died at the age of 80-85 years. The property was
stated to be ancestral.

Defendants contested the suit and denied all the averments.

The Will was genuine and registered, which was executed by her with own volition. Relationship of plaintiff with Resham was also denied. It was stated that she was mentally fit and looked after by the defendants.

Learned counsel for the appellant-plaintiff submitted that the Courts below have non-suited the plaintiff as he miserably failed to prove the factum of Resham being of unsound mind. In case, the Will was to be discarded, plaintiff had a substantial claim than the defendants, in view of Section 15 of the Hindu Succession Act. The Will was surrounded by suspicious circumstances as Desh Raj, beneficiary of the Will was also present at the time of execution of the Will.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit. Though onus is always on propounder of the Will but if the Will was challenged on the ground of suspicious circumstances, categoric, cogent and direct evidence is required to be led. One of the ground of unsound mind remained undischarged in the absence of any examination of doctor or medical record. It is registered document attested by two witnesses, who deposed in terms of provisions of Section 63(c) of the Indian Succession Act.

In the absence of any contrary evidence, the concurrent finding of fact cannot be said to be suffering from illegality and perversity, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

May 08, 2019
Pankaj*

Whether speaking/reasoned	Yes
Whether reportable	No