

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

RSA No.5966 of 2018 (O&M)

Date of Decision:13.03.2019

Dharambir

...Appellant(s)

Versus

Smt. Mishro Devi and others

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Vivek Aggarwal, Advocate for the appellant.

ANIL KSHETARPAL, J. (ORAL)

The plaintiff-appellant is in the regular second appeal against the concurrent findings of fact arrived at by the courts below.

The plaintiff had claimed the succession on the basis of a registered testament dated 18.03.1966 executed by Sanwalia, who died on 13.06.2006.

The defendants disputed the execution of the testament. Both the courts have found that neither any attesting witness of the Will has been examined nor any person who could identify the thumb impression/signatures of the testator or attesting witness has been examined in evidence. Hence, execution of the testament has not been proved, in accordance with Sections 68 and 69 of the Indian Evidence Act, 1872.

Learned counsel appearing for the appellant although admits that fact but submits that there is a subsequent testament dated 18.10.2002 which also bequeaths property in dispute in favour of plaintiff. Learned counsel has read over the aforesaid testament dated 18.10.2002. The

aforesaid testament is with respect to a residential house which is not subject matter of the suit.

The present suit has been filed with respect to agricultural land measuring 50 kanals and 12 marlas. On careful perusal of the aforesaid testament dated 18.10.2002, it is apparent that through the aforesaid testament, the agricultural land has not been bequeathed.

Learned counsel appearing for the appellant wanted to read a line in the testament wherein the testator had got recited that he has already divided the property amongst his three sons.

In the considered view of this Court, such reference cannot be taken as a bequest with respect to agricultural land. A testament has to be read in entirety and thereafter the intention of the testator has to be seen. In the present case, he specifically got recited that the testament dated 18.10.2002 is with respect to a house situated in village Bir Sujra.

Still further, it may be noted that the defendants does not dispute the correctness of the testament dated 18.10.2002. It was for this reason none of the courts below have framed any issue on the validity of the testament dated 18.10.2002 or returned any finding. The claim of the plaintiff-appellant was based upon the testament dated 18.03.1966 which has not been proved.

In view of the above, there is no ground to interfere. Hence, regular second appeal is dismissed. Pending application(s), if any, shall also stand disposed of, in terms thereof.

13.03.2019
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No