

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

**Regular Second Appeal No.6325 of 2018 (O&M)
Date of Decision: April 23, 2019.**

Dharam Singh

.....APPELLANT(s).

VERSUS

Anil Kumar and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Mangal Singh, Advocate
for the appellant (s).

SURINDER GUPTA, J.

Heard.

Plaintiff filed the suit seeking the relief of declaration as follows:-

“Suit for declaration to the effect that the Will made by Phulo Devi w/o Chander Bhan dated 03.01.2013 is illegal, null and void being obtained by defendants under undue influence, coercion, misrepresentation and incompetency to make Will of conjoint property.

It is therefore, prayed that the Will dated 03.01.2019 by Phullo Devi be declared null and void, inoperative and not binding on the plaintiff, further plaintiff be declared to share the property/land equally among the three brothers.”

Learned trial Court upheld the Will executed by Phulo Devi, mother of the parties and dismissed the suit of the plaintiff. The plea raised

by the plaintiff is that the plaintiff along with defendants equally contributed to purchase the land measuring 36 kanals 12 marlas. The land was, however, purchased in the name of Phulo Devi, who was a household lady and had no means to purchase the land. Will dated 03.01.2013 executed by her is illegal, null and void, being obtained by the defendants under the undue influence, coercion, misrepresentation and incompetency of Phulo Devi to execute the Will.

The Courts below relied on the statement of Bimla daughter of testator, who is a marginal witness of the Will to uphold that the Will was validly executed. Sale deed of the suit property dated 02.09.2008 was also in the name of Phulo Devi. Husband of Phulo Devi namely Shri Chander Bhan is stated to be still alive. Keeping in view the above facts, the Courts below have held that as per Section 14 of Hindu Succession Act, 1956 Smt. Phulo Devi was absolute owner of the suit property and was competent to execute the Will. The plaintiff, in order to prove his plea, has placed on file photocopy of pass-book of IDBI Bank showing withdrawal of ₹2,00,000/- on 02.09.2008 and ₹2,50,000/- on 03.09.2008. As the sale deed is dated 02.09.2008, the entry of 03.09.2008, as such, is not relevant. He has also placed on file one statement of account Ex.PW1/C of Patasi Devi, his wife, which shows the withdrawal of ₹11,00,000/- on 02.09.2008.

The question, which arises for consideration, is as to whether these entries can be taken as proof of fact that plaintiff had contributed to the sale consideration of the suit property when the sale deed is exclusively in the name of his mother. It is not disputed that during the life time of Phulo Devi, plaintiff has never claimed the sale deed in her favour as a

benami transaction or has sought declaration of his title or ownership of 1/3rd share in the suit property. Even if, it be believed that he had made some contribution in the sale consideration being a son while purchasing the property in the name of his mother, the transaction, cannot be termed as benami transaction and the plea of appellant-plaintiff in this regard was rightly rejected by both the Courts below. The Will executed by Phulo Devi is a registered document and was duly proved on file. Both the Courts below have committed no error while holding that the title in the suit property shall devolve as per Will of Phulo Devi dated 03.01.2013.

On perusal of the judgments of the Courts below, I find no legal or factual infirmity therein calling for any interference.

No substantial question of law requiring determination arises in this appeal, which has no merits.

Dismissed.

It is, however, made clear that despite dismissal of the suit of the plaintiff, he will be entitled to share in the suit property as per Will dated 03.01.2013, which is an admitted document of the parties.

April 23, 2019.
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***