

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.4359 of 2019(O&M)
Date of Order: 28.04.2022

Kiran Bala

..Appellant

Versus

Sh. Vijay Malhotra and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Dr. Surya Parkash, Advocate
for the appellant.

ANIL KSHETARPAL, J(Oral)

While assailing the findings of fact arrived at by the First Appellate Court, the plaintiff has filed the present appeal.

The dispute is with regard to the succession of House No.235-C, Model Town, Karnal, left behind by Sh. Bhim Sain Malhotra, between the heirs of Bhim Sain Malhotra. The plaintiff is a married daughter and claims property on the basis of natural succession, whereas defendant no.1 is the only son, who claims succession on the basis of a registered Will.

The trial Court decreed the suit while doubting the correctness of the registered Will on the basis of certain suspicious circumstances for which no foundation was laid down.

The learned First Appellate Court on re-appreciation of evidence has recorded a finding of fact that the registered Will has been proved.

The learned counsel representing the appellant has produced a

certified copy of the Will issued by the trial Court. It is evident that the aforesaid Will bears the photograph of the testator Sh. Bhim Sain Malhotra. After giving description of his family members, he discloses his assets including House No.2548, Sector 40-C, Chandigarh, House No. 235/C, Model Town, Karnal, bank accounts, jewellery in the locker and shares bequeathed. He had left behind two married daughters. The other daughter has not chosen to contest the suit. He has bequeathed some amount in favour of his daughters.

The registered Will is signed by late Sh. Bhim Sain Malhotra on each page. He has also signed on different places at the time of its registration. The Will is attested by two attesting witnesses, namely, Gurdial Singh Jaswal, an Advocate and Vijay Ahlawat, both have appeared in evidence and supported the Will.

This Bench has heard the learned counsel representing the appellant and with his able assistance perused the judgments and decrees passed by both the courts below.

The learned counsel representing the appellant contends that Sh. Vijay Malhotra filed a civil suit with respect to the property located in Chandigarh, but he gave no reference to the Will. He submits that this is strong suspicious circumstance which creates a doubt about the genuineness of the Will. He further submits that the respondent is guilty of forging the entry in the trial Court record.

On careful reading of the Will, it is evident that late Sh. Bhim Sain Malhotra, the testator, bequeathed House No.2548, Sector 40-C, Chandigarh, in favour of his wife Smt. Roop Rani. It was provided that, if she dies before the death of the testator, then the aforesaid property located

in Chandigarh will be inherited by Atul Malhotra and Aneesh Malhotra both sons of Sh. Vijay Malhotra in equal share. The other suit was filed claiming that both the sisters have given affidavits admitting defendant no.1 to be owner of the property.

In the considered view of the Court, as the registered Will is not in favour of the defendant no.1, with respect to the property located in Chandigarh, therefore, non-production of the Will in the aforesaid litigation cannot be construed to be a suspicious circumstance that will create doubt about the genuineness of the Will.

As regards the argument that Sh. Vijay Malhotra has facilitating forging of the Municipal record, it may be noted that the learned counsel representing the appellant has produced a certified copy of the house tax demand register wherein the entry of the house in question has been entered without its serial number. In the considered opinion of this Court, in absence of concrete evidence to prove that Sh. Vijay Malhotra interpolated the Municipal record, it would not be appropriate to record any findings. The Will in question is a registered Will, executed on 06.06.2005, whereas it was registered on 07.06.2005. He remained alive for a period of 1 year. It is also evident that late Sh. Bhim Sain Malhotra meticulously gave details of the movable and immovable properties and prepared the bequest while giving some part of his estate to every one in the family. It has been recited in the Will that he is bequeathing Rs.31000/- to each of his daughter.

Keeping in view the aforesaid facts, no ground to interfere with the findings of fact arrived at by the First Appellate Court is made out.

Dismissed.

All the pending miscellaneous applications, if any, are also

disposed of.

April 28, 2022

(ANIL KSHETARPAL)
JUDGE

nt

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No