

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

RSA-123-2018 (O&M)

Date of Decision: September 19, 2023

KARAJ SINGH AND ANR

..... Appellants

Versus

AMRIK SINGH AND ORS.

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Munish Gupta, Advocate for the appellants.

HARKESH MANUJA, J. (ORAL)

By way of present appeal, challenge has been laid to the judgments and decrees dated 04.11.2014 and 03.03.2017 passed by the Courts below whereby a suit for declaration as well as permanent injunction filed at the instance of respondents-plaintiffs has been decreed.

2. In the present case, the parties are closely related to each other as brothers and sisters being children of Harnam Singh and Attar Kaur. The case set up in the plaint filed at the instance of respondents-plaintiffs is that the property in question was originally owned by Harnam Singh which was transferred in the name of Smt. Attar Kaur on the basis of consent decree who later executed a registered Will dated 27.09.2005 in favour of respondents No.1-3/plaintiffs. It was further alleged that after the death of Smt. Attar Kaur, the appellant-defendant No.1 got a mutation entered on the basis of natural succession and in view thereof, he was trying to interfere in the possession of the plaintiffs-respondents no.1-3 over the suit property, thereby compelling them to file the suit.

3. Upon notice, the appellants-defendants No.1 and 2 appeared and contested the suit while disputing the validity of Will dated 27.09.2005, alleging it to be forged and fabricated document.

4. The trial Court vide judgment and decree dated 04.11.2014 decreed the suit in favour of respondents No.1-3/plaintiffs. Aggrieved thereof, the appellants-defendants No.1 and 2 filed the First Appeal, however, the same was dismissed by the First Appellate Court vide judgment and decree dated 03.03.2017.

5. Impugning the aforementioned judgments and decrees passed by the Courts below, learned counsel for the appellants-defendants No.1 and 2 submit that execution of the Will in question (Ex.P-1) was never proved as per law by respondents No.1-3/plaintiffs. He also points out that though the Will was executed on 27.09.2005, however, the same was got registered on 28.09.2005 and similarly, the attesting witness namely Gurjeet Singh does not belong to the Village of the testator and thus in view of the aforesaid, the Will was surrounded by suspicious circumstances.

6. I have heard learned counsel for the appellants and gone through the paper-book. I am unable to find substance in the submissions made by learned counsel for the appellants.

7. In the present case, the execution of Registered Will dated 27.09.2005/28.09.2005 has been duly established on record by respondents No.1-3/plaintiffs having proved its valid attestation through the deposition of PW1-Gurjeet Singh who happened to be one of its attesting witnesses besides having produced son of the Deed Writer PW4 namely, Mandeep Sharma as well as Handwriting Expert PW6 R.V. Vashista who proved thumb impressions of the testator. In addition,

respondents No.1-3/plaintiffs have also proved on record the admission made by the testator before the Investigating Agency in the investigation proceedings which were carried out in pursuance to a complaint filed at the instance of appellant-defendant no.1, alleging forgery qua the execution of Will. Those investigation proceedings were proved on record through PW5 and in the aforesaid manner, the execution of the Will has been validly proved on record in consonance with the provisions of Section 63 of The Indian Succession Act, 1925 and Section 68 of The Indian Evidence Act, 1872.

8. Moreover, in the facts and circumstances of the present case, mere fact that the attesting witness did not belong to the village of the testator and he happened to be a resident of adjoining village, besides registration of Will on the next day of its execution cannot be taken to be suspicious circumstance, particularly when the execution of the Will was duly admitted by the testator even before the Investigating Agency, besides there being no evidence about the beneficiaries having actively participated in the process of its execution.

9. In view of the discussions made hereinabove, there being no illegality or perversity in the concurrent findings of fact recorded by the Courts below as regards valid execution of Will (Ex.P-1) and the same being not surrounded by suspicious circumstance, the same is dismissed, being devoid of merits.

10. Pending application(s), if any, shall also stand disposed of.

19.09.2023
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(HARKESH MANUJA)
JUDGE

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

