

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-3783-2018 (O&M)
Date of Order: 14.07.2023

Raj Bala

.Appellant

Versus

Krishna and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Jaideep Verma, Advocate
for the appellant.

ANIL KSHETARPAL, J

1. The correctness of the findings of fact arrived at by the First Appellate Court is assailed by the plaintiff by filing this second appeal.
2. The dispute is with regard to the property left behind by late Sh. Dharam Singh. At the time of his death, he left behind three daughters, namely, Smt. Raj Bala, (plaintiff-appellant), Smt. Krishna and Smt. Luxmi. During his life time, late Sh. Dharam Singh executed various Wills including 23.07.2004, 14.07.2005 and the last Will dated 21.10.2010 in favour of Smt. Krishna and Smt. Luxmi while excluding Smt. Raj Bala. On 19.10.2010, he executed a transfer deed in the favour of Smt. Krishna and Smt. Luxmi. The aforesaid transfer deed is not only registered but even a photograph clicked by the office of sub-registrar is also printed on the transfer deed.
3. Smt. Raj Bala filed a suit for declaration that such transfer deed is illegal as the property was by nature ancestral and coparcenary.

4. The defendants while contesting the suit claimed that late Sh. Dharam Singh was the absolute owner of the property.

5. While re-appreciating the evidence, the First Appellate Court found out that previously Smt. Karian wife of Sh. Surjan was the owner of the property. Late Sh. Dharam Singh succeeded to the property after the death of his mother. Thus, the Court held that the property was neither ancestral nor coparcenary. It was further found that the plaintiff has failed to prove that the property is ancestral or coparcenary property. Thus, the appeal was accepted and the judgment and decree passed by the trial court was set aside.

6. The learned counsel representing the appellant while highlighting that late Sh. Dharam Singh was suffering from cancer and he died barely after a period of 5 days from the date of execution of the release deed (transfer deed), hence, the document was not executed on account of free will. He submits that the execution of the document is doubtful and therefore, the First Appellate Court erred in accepting the appeal. He further submits that once the transfer deed was executed on 19.10.2010, there was no necessity to execute the registered Will in favour of Smt. Krishna and Smt. Luxmi on 21.10.2010, therefore, the execution of the transfer deed becomes doubtful.

7. This court has considered the submissions.

8. On the request of the Court, the learned counsel representing the appellant has produced a photocopy of the transfer deed executed on 19.10.2010. It is evident from its perusal that the deed is not only signed but even thumb marked by late Sh. Dharam Singh. He has also thumb marked

the transfer deed in the presence of the sub-registrar. On the last page of the transfer deed, photographs of late Sh. Dharam Singh as well as marginal witnesses are printed. Even the photograph of sub-registrar has been printed. The sub-registrar has certified that the aforesaid transfer deed was presented by Sh. Dharam Singh and Smt. Krishna accepted the aforesaid transfer deed. The transfer deed is also signed by two marginal witnesses, namely, Mr. Prem Singh and Mr. Mulakh Raj. The plaintiff (appellant) has failed to produce in evidence to prove that such document was either result of fraud or coercion. No evidence has been led to prove that late Sh. Dharam Singh was not mentally agile at the time of execution of the transfer deed. A cancer patient can be mentally agile till his last stage. It would not be appropriate to draw presumption that late Sh. Dharam Singh, who was suffering from cancer was not mentally alert on 19.10.2010 and 21.10.2010. Moreover, the transfer deed has been executed by late Sh. Dharam Singh in favour of his two daughters. The same is the position with respect to the Will dated 21.10.2010 executed by Sh. Dharam Singh.

9. The next argument of the learned counsel also has no substance because the execution of the Will subsequent to the transfer deed may be a precautionary step taken by late Sh. Dharam Singh to ensure that his wishes are honoured. The Will operates after the death of the testator. Moreover, there is no contradiction between the transfer deed and the Will. Both the documents are in favour of the same daughters.

10. Keeping in view the aforesaid facts and discussions, no ground to interfere with the concurrent findings of fact is made out.

11. The regular second appeal is dismissed.

12. All the pending miscellaneous applications, if any, are also disposed of.

July 14, 2023
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned :YES/NO
Whether reportable :YES/NO