

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

RSA-5421-2017(O&M)

Date of Decision: August 08, 2023

SALINDER KAUR @ SURINDER KAUR CHIMA & ANR

..... Appellants

Versus

MOHINDER SINGH & ORS

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Ms. Babita, Advocate for the appellants.

HARKESH MANUJA, J. (ORAL)

By way of present appeal, challenge has been laid to the judgments and decrees dated 12.02.2014 and 01.09.2016 passed by the Courts below whereby a suit for declaration claiming half share out of the estate left by Darshan Singh i.e. the father of the parties, based on registered Will dated 10.04.1989 besides praying for permanent injunction as well as joint possession was decreed and the First Appeal filed at the instance of appellants-defendants was dismissed.

2. Briefly stating, the disputed estate left by deceased Darshan Singh has become an apple of discord between his legal heirs. Respondent No.1-plaintiff, relying upon registered Will dated 10.04.1989 executed by the deceased-father, filed the present suit seeking declaration claiming half share besides praying for permanent injunction as well as joint possession.

3. On the other hand, the appellants-defendants disputed the validity of Will dated 10.04.1989 by raising the plea of fraud. The trial

Court

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vide judgment and decree dated 12.02.2014 decreed the suit filed by the respondent No.1-plaintiff, upholding the execution/validity of the aforementioned will.

4. Aggrieved thereof, the appellants-defendants filed First Appeal, the same was dismissed by the Court of Ld. Addl. District Judge, Jalandhar vide judgment and decree dated 01.09.2016.

5. Impugning the aforementioned judgments and decrees passed by Courts below, learned counsel for the appellants vehemently submits that original Will was never produced on record besides the respondent No.1-plaintiff also having failed to appear as a witness to support his claim in the suit. No other argument has been addressed.

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. The execution of the Will in question dated 10.04.1989 has been duly proved on record in consonance with Section 63 of the Indian Succession Act, 1925 read with Section 68 of Indian Evidence Act, 1872 through attesting witness PW-4-Sarwan Singh. Though, as a matter of fact, the original Will has not been produced on record, however, the certified copy thereof from the office of concerned Sub-Registrar was produced on record as Ex.P-1 and accepted as valid evidence by the Courts below. Besides it, in the present facts and circumstances, the non-appearance of respondent No.1-plaintiff would not entail adverse inference against him as the appellants-defendants

could not even plead the basic ingredients of 6 Rule 4 of CPC

and thus the non-appearance of respondent No.1-plaintiff as witness did cause any prejudice to them and thus could be counted fatal to the claim of respondent No.1-plaintiff.

7. In view of the discussions made hereinabove and finding no illegality or perversity in the judgments and decrees passed by the Courts below, the present appeal is dismissed.
8. Pending application(s), if any, shall also stand disposed of.

08.08.2023
tejwinder

(HARKESH MANUJA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>