



ESA-5-2022(O&M)

Date of decision : 23.07.2024

Ramandeep Kaur

...Appellant

Vs.

Major Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sunny Singla, Advocate
for the appellant.Mr. Arihant Jain, Advocate and
Mr. Kanish Jindal, Advocate
for respondent No.1.

ANIL KSHETARPAL, J. (Oral)

1. This execution second appeal has been filed to assail the correctness of the concurrent orders passed by the Executing Court and the First Appellate Court while dismissing the petitioner's objection petition.

2. In a suit for recovery against appellant's mother and brother, a decree for recovery of Rs. 10 lacs alongwith interest has been passed. The aforesaid decree has become final. In order to recover the amount, the execution proceedings are pending. The appellant claims that she is the exclusive owner of the property by virtue of Will executed by her father-Sh. Amar Singh on 02.08.2009. The Executing Court culled out the issues and called upon the parties to lead evidence, however, she neither produced the Will nor proved it. Hence, the objection petition was dismissed.

3. Learned counsel representing the appellant contends that the Executing Court erred in failing to cull out specific issues with regard to validity of the Will.



4. This Court has considered the submissions made by the learned counsel representing the parties.
5. The Executing Court had culled out the following issues:-
1. *Whether objector is owner in possession of the suit property? OPD*
 2. *Whether the JD was owner in possession of the attached property at the time of passing of decree? OPDH*
 3. *Whether present objection petition is not maintainable?OPDH*
 4. *Relief.*
6. The appellant was granted opportunity to prove the aforesaid issues. Issue No.1 is comprehensive to cover the alleged Will of Sh. Amar Singh because the appellant claims the property only on the basis of alleged Will of Sh. Amar Singh, however, she failed to prove the same. Hence, there is no substance in the argument of learned counsel representing the appellant. He further contends that the property left behind by Sh. Amar Singh can at the most be attached to the extent of 50% because Sh. Amar Singh left behind class I heirs including widow, a son and two daughters. Admittedly, this aspect has never been pressed before the courts below.
7. In these circumstances, the appeal is dismissed with the observation that the appellant shall have liberty to bring this fact to the notice of the Executing Court.
8. All the pending miscellaneous applications, if any, are also disposed of.

(ANIL KSHETARPAL)
JUDGE

23.07.2024

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Whether speaking/reasoned :
Whether Reportable :

Yes	No
Yes	No