

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-738-2021 (O&M)

Date of decision: 27.02.2024

Anjli Chaudhary and another

....Appellants

Versus

Ruby Chaudhary @ Ruby Luthra and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. K.B.Raheja, Advocate for the appellants

Mr. Gobind Rai Sharma, Advocate for the respondents

ANIL KSHETARPAL, J (Oral)

1. In this Regular Second Appeal the defendants assail the correctness of the concurrent findings of fact arrived at by the courts below, while decreeing the plaintiff's suit for the grant of decree of declaration that she is owner to the extent of 1/3rd share in the total land measuring 4 kanals on the basis of a registered Will dated 18th February, 2008 executed by her mother Smt. Devi Chaudhary and for partition of the suit property.

2. In order to comprehend the issue involved in the present case, some relevant facts, in brief, are required to be noticed.

3. Originally, Sh. Vikas Chaudhary was owner of the property, who died on 9th January, 2008. He had left behind three class I heirs, i.e mother, widow and a minor daughter. Thus, 1/3rd property was inherited by his mother Smt. Devi Chaudhary. She bequeathed her share in favour of her daughter Smt. Rubi Chaudhary, respondent herein (plaintiff in the trial court) by way of a registered Will dated 18th

February, 2008. The execution of the Will was proved by examining Sh.Bhupinder Singh, PW1, an attesting witness of the Will as well as PW3, scribe Sh. Vijay Kumar Bajaj. Thus, both the courts below held that the Will is proved and the plaintiff is entitled to a primary decree of partition.

4. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

5. Learned counsel representing the appellants, while referring to the testimony of Sh.Bhupinder Singh, submits that he has failed to fulfill the requirements of Section 63 of the Indian Succession Act, 1925 as he does not state that he attested the Will in the presence of the testator. He further submits that the second attesting witness has not been examined and Smt. Devi Chaudhary has failed to explain the reasons for excluding the other class I heirs.

6. This Court has considered the submissions made by the learned counsel representing the parties.

7. Shri Raheja, the learned counsel representing the appellant has read over the testimony of Sh.Bhupinder Singh, attesting witness of the Will. He has stated that the executant and both the attesting witnesses were present when the Will was scribed and signed. This deposition includes the fact that the attesting witness also signed in the presence of the testator. During cross-examination, the learned counsel representing the defendants failed to impeach his credibility. There was no suggestion that Sh.Bhupinder Singh did not append his signatures in the presence of the testator.

8. As regards the second argument, it may be noticed that Smt. Devi Chaudhary has bequeathed the property in favour of her daughter, which is not un-natural. Moreover, the scribe has been examined, who has stated that the testator as well as the witnesses signed the entry in his notebook.

9. Keeping in view the aforesaid facts, no ground to interfere is made out.

10. Hence, dismissed.

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

27.02.2024
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE