



RSA-1456-1993(O&M)

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

RSA-1456-1993(O&M)
Reserved on : 12.12.2024
Date of decision: 14.01.2025

Smt. Roshni

..Appellant

Versus

Umed Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Kapil Bakshi, Advocate for
Mr. A.R.Takkar, Advocate
for the appellant (through VC)

Mr. D.K.Sihag, Advocate for the respondents

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ANIL KSHETARPAL, JUDGE

1. Factual Background:-

1.1 In this Regular Second Appeal, the plaintiff assails the correctness of concurrent findings of fact arrived at by the courts below while dismissing her suit for the grant of decree of declaration to the effect that she is owner in possession of the 1/8th share of the land measuring 118 kanals 18 marlas and 1/4th share in plot measuring 600 sq. yards with a consequential relief of permanent injunction restraining the defendants from interfering in her possession.

1.2 In substance, the dispute is with regard to inheritance of the property left behind by late Sh.Balwan Singh son of Jugti Ram who died on 05.06.1994. The contest is in between the widow (appellant) and the mother

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of late Sh.Balwan Singh. The plaintiff (Smt. Roshni) claims the property on the basis of natural succession being widow whereas Smt. Khazani, the mother claims the property to exclusion of the widow on the basis of Will dated 02.06.1984 Ex.D1. The execution of the Will has been proved by examining DW5/A Ujala Ram Sarpanch, attesting witness of the Will and Himmat Singh DW3 (scribe).

1.3 Per contra, the plaintiff examined Ram Phal, Maya Ram, Kamla besides examining herself in evidence.

1.4 Upon appreciation of evidence, both the courts have concurrently held the Will dated 02.06.1984, has been proved and the plaintiff had left company of late Sh.Balwan Singh 7-8 months before his death as she started residing with her parents.

2. Arguments put forth by the learned counsel representing the parties:-

2.1 Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook alongwith requisitioned record.

2.2 Learned counsel representing the parties have also filed synopsis apart from their oral submissions.

2.3 The main argument of the learned counsel representing the appellant is that both the courts have failed to discuss the plaintiff's evidence in proper perspective as only insignificant reference has been made to the plaintiff's evidence by the trial court as well as First Appellate Court. While referring to the deposition of PW1 Smt. Roshni, the plaintiff, PW2 Ram Phal, PW3 Maya Ram, PW4 Smt. Kamla, PW5 Bheem Singh, PW6 Baldev

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Singh Dutt, Handwriting expert, learned counsel submitted that both the courts have erred in failing to discuss the evidence of the plaintiffs.

3. Analysis and Discussion:-

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

3.2 Smt. Khazani claims the property to the exclusion of Smt. Roshni on the basis of Will Ex.D1 dated 02.06.1984 executed by late Sh.Balwan Singh. The execution of the Will has been proved by examining DW5/A Ujala Ram, Sarpanch of village Gadhi Khera, the same village where late Sh.Balwan Singh used to reside. This witness has proved the Will in accordance with Section 68 of the Indian Evidence Act, 1872. DW3 Himmat Singh scribe has also proved the Will. Sh.Balwan Singh was admitted in hospital for the last 18 days before his death on 05.06.1984. It has been proved that as many as 7 persons including DW1 Balbir Singh and DW2 Ram Kumar donated blood to Sh.Balwan Singh on the request of Smt.Khazani. DW4 Darshan Lal, Lab Technician, Blood Bank, Medical College, Rohtak proved that as many as seven persons including he donated blood. PW5 Khazani also proved that late Sh.Balwan Singh was admitted in the hospital and the plaintiff never served him. It was deposed by her that no one from Roshni's village came to the hospital to visit late Sh.Balwan Singh. It has also been proved that Smt. Roshni walked out of Balwan Singh's house and started residing with her parents in a separate village.

3.3 Ram Phal has stated that Smt.Roshni, the plaintiff used to take care of Smt.Balwan Singh. Similarly, PW3 Maya Ram supported the plaintiff's case. Smt. Kamla PW4 was the nurse in the hospital whereas Sh.

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Baldev Singh Dutt is handwriting and finger print expert. Both the courts have recorded findings of fact based upon cogent evidence.

3.4 This Court has carefully read the deposition of plaintiff's witnesses including Smt. Roshni, the plaintiff herself. She stated that Balwan Singh died at 5 p.m in the evening whereas as per the death certificate Sh.Balwan Singh died at 5:15 a.m. She deposed that she requested Balwant Singh to execute Will in her favour but Balwant Singh did not oblige her.

3.5 Learned counsel representing the appellant failed to draw the attention of the Court to any misreading of substantive evidence, particularly of attesting witness Ujala Ram Sarpanch and scribe Himmat Singh.

4. Decision:-

4.1 Consequently, finding no merit, the appeal is dismissed.

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

(ANIL KSHETARPAL)
JUDGE

14.01. 2025
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Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No