(1989) 02 P&H CK 0033

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 1721 of 1983

Dalip Singh and Others		APPELLANT
	Vs	
Pritam Kaur		RESPONDENT

Date of Decision: Feb. 16, 1989

Hon'ble Judges: G.C. Mittal, J

Bench: Single Bench

Judgement

G.C. Mittal, J.

Thakar Singh is alleged to have executed a Will on 24.11.1967 in regard to his estate in favour of his nephews who were allegedly serving him. On 10.4.1974 Smt. Pritam Kaur daughter of Thakar Singh filed a suit for possession of the estate left by her father on the ground that she was the next heir after the death of her father who died about three months ago and challenged the correctness of the Will relied upon by the nephews of Thakar Singh who had entered into possession on his death. The trial court came to the conclusion that the execution of the Will was proved. It also came to the conclusion that the nephews were serving him and he was residing with them and that the daughter had been married long time back and amongst the Jats of this part of the country it was usual to keep the ancestral property in the hands of their family and not to give it to the daughters or sisters. The daughter''s suit was dismissed in view of the aforesaid findings. On daughter''s appeal the lower Appellate court came to the following conclusion which is recorded in second sentence of para 7 of the judgment:

So far as the execution of the Will is concerned, that is not the fact in dispute.

However, the Lower Appellate court proceeded to consider that since the name of the daughter was not mentioned in the Will, who was natural heir, as to why she was being excluded from inheritance and ultimately recorded a finding as follows:

...It is to be seen that the plaintiff is the only real heir of the deceased, and when she is left out, without any valid reasons, would mean that the Will was the product of

under influence exercised. It does not express the mind of the testator.

The lower Appellate Court also took notice of the fact that the living of the deceased with the nephews would rather suggest that they exercised their under influence and in the circumstances, no mention was made by the testator as to why he was leaving out his real daughter. In the aforesaid background, it was concluded that the Will was not a natural document and it did not express true mind of the testator and after ignoring the Will, the suit was decreed. This is second appeal by the alleged legatees of the Will.

2. After hearing the Learned Counsel for the parties and perusal of the record, I am of the view that the lower Appellate Court was not right in disturbing the well considered judgment stered will about seven years prior to his death and the execution of the Will by him has been proved by the scribe who is a petition writer and the two attesting witnesses. One attesting witness is the Lambardar of the village and the other is the Sarpanch. It is not uncommon amongst Jats of this part of the country that they prefer to keep the property in the family. He had only a daughter who was married 21 years prior to the date of execution of the Will, in another village and throughout this period he was being looked after by his brothers and then by his nephews as his wife had died sometime back. The peculiar fact of this case did not justify recording of a binding that the Will was obtained by undue influence because the testator was living with his nephews. If such a view is to be taken in generality, then the legatees with whom the testator would be living, would always be left out as the Will would be declared as having been obtained by undue influence by them. No plea was taken in the plaint that the Will was obtained by undue influence. Rather the plea was that he had not executed any Will and the alleged Will was a bogus document. It is true that the daughter who was a natural heir, was left out without mentioning her name in the Will. On this circumstances alone, it cannot be concluded that the Will was obtained by undue influence. There are certainly some judgments which show that if the next heir, who is dependent on the testator or his otherwise entitled to maintenance in law, is excluded without giving a reason, that coupled with other attending circumstances, may be sufficient to come to the conclusion that the Will was not natural and did not express true mind of the testator. In this case that is not the position because the daughter was married long time back and she was giving during all this period whatever the testator wanted to give to her. This point was noticed by the lower appellate court in para 9 of its judgment, yet genuineness of the Will was unnecessarily doubted because the natural heir was being left out.

3. For the reasons recorded above, I am of the view that the lower appellate court did not consider the matter in the true legal perspective and gave a conjectural finding that the Will was obtained by undue influence. Reversing that finding, the judgment and decree of the trial Court are restored by accepting this appeal, leaving the parties to bear their own cost.