

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No.7636 of 2013 (O&M)

Date of Decision.24.04.2015

Jai Lal and another

.....Petitioners

Versus

Smt. Santra Devi and others

.....Respondents

Present: Mr. Mohit, Advocate for
Mr. R.A. Sheoran, Advocate
for the petitioners.

Mr. Rakesh Nehra, Advocate
for the respondents.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

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K. KANNAN J. (ORAL)

1. The order passed is untenable and it is bound to be set aside, for, the plaintiffs filed a suit on a plea that the Will propounded by the defendants is not true and it is a forgery. It is also their contention that the father was not in fit state of mind to execute the Will. The Court has held that the onus of proof that the father was not in fit state of mind will be on the plaintiffs and it will shift to the defendants after the initial onus is discharged. This observation is untenable, for, Section 68 of the Evidence Act places a burden of proof only on the person who propounds the Will and if a person says that it is forgery, it is a manner of saying that the Will is not true. Any person who wants the Will to be established and wants to claim right under that Will takes a burden on himself, for, Sections 101 to 103 of the

Evidence Act set out the manner of discharge of burden and if person wants a relief on the basis of assertion which he or she makes, the burden will be on that person. If the defendants, therefore, set up a Will as executed by her husband, the burden will always be only on the defendant. Burden never shifts. Only the onus shifts. Though under common parlance, we make no distinction between onus and burden, if it is put in challenge, we must always understand that the Court decides on the burden of proof. The burden of proof exists only on the defendant and it cannot shift to the plaintiff at all irrespective of what the plaintiff says about the circumstances under which the Will came to be effected.

2. The issue shall be in the manner that the plaintiff has asked to be framed:-

“ Issue No.2: Whether the deceased Chitter duly executed a valid Will vasika No.336/3 dated 12.11.99 in favour of the defendant No.1 and the Will and subsequent mutation No.790 on its basis are valid and legal. If so what effect ?
OPD”

3. The order passed by the court below is set aside and the revision petition is allowed.

(K. KANNAN)
JUDGE

April 24, 2015
Pankaj*