

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

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**RSA -1601 OF 2015 (O&M)
DATE OF DECISION:07.12.2015**

PRITHIPAL SINGH

....Appellant

VS.

DHARAMPAL SINGH AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. S.S. Rangi, Advocate
for the appellant.

Mr. Harmanpreet Singh Cheema, Advocate
for the respondents.

AMIT RAWAL, J. (ORAL)

The appellant-plaintiff-Prithipal Singh in regular second appeal against the concurrent findings of fact whereby a suit for claiming declaration that the will dated 14.01.1993 executed by Harnam Kaur-mother in favour of her three sons Jagtar Singh, Dharampal Singh and Kundan Singh was surrounded by suspicious circumstances as no reason has been assigned to alter the line of succession, has been decreed.

Mr. S.S. Rangi, learned counsel appearing on behalf of the appellant submits that the aforementioned brothers also filed a suit claiming declaration that they are owners by virtue of the Will aforementioned executed by Harnam Kaur, which has been decreed by both the courts below.

The present regular second appeal arises from the dismissal of

the suit bearing No.1367T/120T. The original Will dated 14.01.1993 has not seen the light of the day. However, the same has been proved on record by the attesting witnesses. The Will according to learned counsel, record was surrounded by the suspicious circumstances. He, however, submits that since the original will has not seen the light of the day, therefore, thumb impression of the Harnam Kaur could not be proved. Thus, the Court below ought to have discarded the Will and deciding suit by holding that on demise of Harnam Kaur, all the natural heirs would succeed as per their respective share by way of natural succession. The aforementioned facts have not been noticed by the both the Courts below, therefore, there is a illegality and perversity much less to erroneous submission of law.

I have heard learned counsel for the parties and appraise paper book.

The Will had been proved through secondary evidence. The said order has attained finality. No efforts have been made to assail by making provisions of Order 43 Rule 1 A of the Code of Civil Procedure. It is a registered will and the certified copy of the same has proved on record. Both the attesting witnesses have deposed as per the provisions of Section 63 C of the Indian Succession Act and the appellant has not been able to cause any dent in their cross-examination. Once the essential ingredients of Section 68 of the Indian Evidence Act, much less, of Section 63C of Indian Succession Act have been proved nothing survives in the appeal. The execution of will itself amounts to deviating from the line of succession which has been recognised by the Court of law. It cannot be termed to be suspicious circumstances.

Keeping in view the aforementioned facts I do not find any illegality or perversity in the findings rendered by both the courts below which are based upon the appreciation of the oral and documentary evidence, much less, no substantial question of law arises.

Accordingly appeal is dismissed.

(AMIT RAWAL)
JUDGE

December 07, 2015.
SwarnjitS