

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

RSA No. 2797 of 2014 (O&M)

Date of decision: November 17, 2015

Hari Dass

...Appellant

Versus

Kishni Devi

...Respondent

**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?

Present: Mr. Abhinav Sood, Advocate,  
for the appellant.

**K. KANNAN, J. (Oral)**

1. The appeal raises the only issue of genuineness of the Will said to have been executed by the father in favour of the plaintiff on the basis of which the plaintiff was seeking for a declaration that the mutation of revenue entry in the name of the defendant also as a successor was invalid. The trial court decreed the suit but the lower appellate court reversed the decision finding that the Will had not been established. It took notice of the fact that no witness to the Will has been examined by the plaintiff and indeed, one of the persons said to be a witness came to court to support the defendant that the thumb impressions found, purporting to be his as an attester, were not his. The court found, therefore, the proof as required under Section 68 of the Indian Evidence Act and under Section 63 of the Indian Succession Act had not been established.

2. Learned counsel for the appellant argues that since the defendant/sister had actually admitted the Will executed by the father, there was no requirement of proof of attestation. I reject this argument as contrary to the express requirement of Section 68 of the Indian Evidence Act. Section 68 of Indian Evidence Act carves out an exception for a Will to be proved in all cases even if it is admitted. Section 68 of the Evidence Act contains a proviso which says “provided that it shall not be necessary to call attesting witness in proof of the execution of any document, not being a Will, which has been registered...” (emphasis supplied).

3. The decision of the lower Appellate Court is correct and would require no interference.

4. The second appeal is dismissed accordingly.

**November 17, 2015**  
prem

**(K.KANNAN)**  
**JUDGE**