

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

RSA No.3791 of 2014

Date of Decision.04.12.2015

Jagdish s/o Sh. Shankar Lal

.....Appellant

Vs.

Surajbhan s/o Sh. Shankar Lal

.....Respondent

Present: Mr. R.N. Singal, Advocate
for the appellant.

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 plaintiff who filed the suit claiming the right to the property of the father was contested in the suit by his brother-defendant propounding a Will said to have been executed by two persons and each one of the attestors has spoken about the fact that they had seen Shankar Lal affixing his thumb impression and they signed beneath his thumb impression. The Court relied on the evidence of these witnesses and found the Will to be established.

2. Learned counsel appearing for the appellant states that Shankar Lal had already executed the sale deed using his handwriting and there was no explanation given as to why thumb impression had been used. I asked the counsel whether there was any cross-examination made against any of the witnesses who spoke about the fact they had seen Shankar Lal affixing thumb impression and the counsel produces before me the copies of the cross-examination

recorded of the witnesses. I find nothing elicited from them. The counsel explained that it should be for the person who was the propounder to explain the circumstances as to why he could not put his signature and only his thumb impression was taken. The counsel is unable to produce to me the evidence of the defendant who was propounding the Will to examine whether there had been any explanation given by him or not. I asked the counsel whether there was any particular evidence of the plaintiff for him to say that the father could not have put his thumb impression when he was capable of subscribing his signature to the document. The counsel would state that the plaintiff himself was not examined and he had not given any evidence about the circumstance where the father could have or could not have used his thumb impression when he was capable of signing the document. With the quality of evidence that had been adduced before the Court and the manner in which the Courts below have considered, I would find no error for intervention in the second appeal.

3. There is no merit in the second appeal. The second appeal is dismissed as devoid of merit.

(K.KANNAN)
JUDGE

December 04, 2015
Pankaj*