

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

Regular Second Appeal No.965 of 2015 (O&M)

Date of decision: 17.08.2015

Smt. Tripta Kumari and others

... Appellants

versus

Smt. Vinod Rani alias Babli (since deceased, through her LRs) and others.

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Daygeesh Kumar Bhatti, Advocate,
for the appellants.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J. (Oral)

1. The plaintiffs, who are the sisters of the contesting defendant (since deceased), challenged a Will propounded by the defendant for mother's property. The mother had a reason to bequeath in favour of the defendant in preference to the other daughters by the fact that all other daughters had been married and gone away from the village to live with their respective husbands in reasonably good financial status. The defendant-daughter had not sufficient means or independent house and she was actually living

with the testator along with her husband. The choice of bequest to the daughter, who was living with her was, therefore, taken as a natural disposition and since both the attestors in the Will had died, the execution was sought to be proved by calling upon the persons who are acquainted with the signature of the testator in the manner required under Section 69 of the Evidence Act.

2. The counsel points out that the trial Court had framed the issue of whether the Will was true and valid and placed the burden of proof on the defendant correctly, but at the time of delivering the judgment, the Judge had observed that the burden of proof must have been on the plaintiff. The approach of the trial Court was, therefore, wrongly deflected to place the burden on the plaintiff. I find the issue, as framed, placing the burden on the defendant, was correct and if the trial Court, while delivering the judgment, made observations that the burden must have been cast on the plaintiff, it was surely relevant. If that issue has been pointed out in the ground of appeal of the plaintiff, Order 41 Rule 24 CPC requires the appellate Court to frame an appropriate issue. If the evidence is otherwise available and the appellate court decide the case itself, and if need be, it could remand the case if it recast the issue and required any further evidence. In this case, the wrong manner of casting the burden has not created any confusion at the trial or loss of focus for the trial Court and the appellate court.

While it reproduced the issues, the appellate court had cast the burden only at the defendant for the validity of the Will. It has examined the version of witnesses who have spoken about the Will and it has come to the conclusion that the disposition was natural under the circumstances explained by the defendants.

3. The relevant facts for consideration by testing the genuineness of the testamentary disposition have been properly undertaken and there is a full-fledged consideration of the requisite facts.

4. I do not find there is any error involved in the ultimate decisions taken by the two courts below for any intervention in the second appeal. Second appeal is dismissed as not requiring any adjudication on a point of law.

(K.KANNAN)
JUDGE

17.08.2015
sanjeev