

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

RSA No.439 of 1987 (O&M)

Date of decision : 21.09.2016

Harphool (deceased through LRs) and others

...Appellants

Versus

Ram Pal and others

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. S.S. Dinarpur, Advocate for the appellants.

Mr. Karan Singh, Advocate for the respondent Nos.1 and 2.

AMIT RAWAL, J. (Oral)

The appellants-plaintiffs are aggrieved of the concurrent findings of fact, whereby the suit for declaration challenging the registered Will dated 24.11.1970 executed by Manohori widow of Atma Ram in favour of defendant No.1 and 2 who are sons of Krishan Singh brother of her husband namely Atma Ram, has been dismissed.

Mr. S.S. Dinarpur, learned counsel appearing on behalf of appellants-plaintiffs submits that as per the pedigree table, both the parties are related to Manohori widow of Atma Ram. The will propounded by the defendants suffers from suspicious circumstances as Manohori had never executed any Will or thumb marked. Both the attesting witnesses namely Maya Ram and Risal Singh had died. A very faint attempt was made by the defendants in complying with the provision of Section 69 of Indian Evidence Act by examining the sons of attesting witnesses namely Balak Ram DW4 and DW5 Teja Singh. Both the aforementioned witnesses have

not uttered a single word regarding Will, therefore, Will has not been proved. All these factors have not been noticed by both the Courts below, therefore, property was required to be exceeded by natural succession.

Per Contra, Mr. Karan Singh, learned counsel appearing on behalf of respondent Nos.1 and 2-defendants submits that DW6 Sub-Registrar has been examined who had produced and proved the execution of the Will. In support of the contention, relies upon judgment rendered by Hon'ble Supreme Court in *Ved Mitra Verma Vs. Dharam Deo Verma, 2014 (15) SCC 578*, to contend that where both the attesting witnesses had died and examination of the Sub-Registrar is sufficient for proving the Will, therefore, judgment and decree under challenge are liable to be sustained and thus urges this Court for dismissal of the appeal.

I have heard learned counsel for the parties and appraised the paper book and of the view that the defendants had been successful in discharging the onus of proving the Will, through testimony of Scribe and DW6 from the office of Sub-Registrar, therefore ratio decidendi culled out by Hon'ble Supreme Court squarely applies to the facts and circumstances of the present case. Para No.11 of the same reads as under:-

“11. The attesting witnesses having died, the Sub-Registrar, who had registered the Will was examined as PW-3. He was examined on commission and in response to the questions posed to him, particularly, question no.2, he had set out the circumstances in which the attesting witnesses as well as the Testator had signed on the document. This part of the evidence has been elaborately considered by the High Court to record its satisfaction that the execution of the Will has been proved on the basis of

the evidence of the Sub-Registrar i.e. PW-3. Having considered the aforesaid aspect of the matter, we are of the view that the satisfaction recorded by the High Court does not suffer from any apparent infirmity or fundamental error which would require correction in the exercise of our jurisdiction under Article 136 of the Constitution of India. All the alleged suspicious circumstances surrounding the execution of the Will being capable of being understood in the manner indicated above and the requirement of Section 69 of the Indian Evidence Act, 1872 having been satisfied by the evidence of PW-3, we find that in the present case, the findings and conclusions recorded by the High Court would not call for any interference. Consequently and for the reasons aforesaid, we dismiss the appeal leaving the parties to bear their own costs.”

Examination of Sub-Registrar is sufficient to prove the Will, therefore, there is no force in the submission of Mr. Dinarpur, in relying upon the statement of DW4 and DW5 as DW4 and that DW5 have not uttered a single word regarding the Will. Even if their evidence to be discarded, in my view, as noticed above defendants have proved the Will. She was exclusive owner of the property.

No ground for interference is made as the same are based on appreciation of oral and documentary evidence.

Accordingly, appeal is dismissed.

21.09.2016

pawan

**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No