

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

RSA No.3219 of 2012 (O&M)

Date of decision : 05.08.2016

Amrit Lal

...Appellant

Versus

Raj Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Naresh Kaushal, Advocate for the appellant.

Mr. Vishwajeet Singh, Advocate &
Mr. Keshav Pratap Singh, Advocate for the respondent.

AMIT RAWAL, J. (Oral)

The appellant-defendant is aggrieved of the concurrent findings of fact, whereby suit of the respondent-plaintiff claiming declaration that he is co-owner in joint possession of the land measuring 09 marlas out of land measuring 2 kanals 4 marlas, as described in plaint on the basis of registered Will dated 17.01.2005, duly executed by Swaran Chand and the order dated 29.08.2008 passed by Assistant Collector, 1st Grade, Balachaur, has been set aside and the defendant has been restrained from dispossessing the plaintiff along with the himself.

Mr. Naresh Kaushal, learned counsel appearing on behalf of appellant submits that Swaran Chand father of the parties to the lis had executed a registered Will dated 24.06.1988. Same has been relied, therefore, respondent-plaintiff could not have set up or propounded the Will in question. The contesting witnesses have not deposed in terms of provision of Section 63(c) of the Indian Succession Act, much less, there is no compliance of Section 68 of the Indian Evidence Act. Previous Will dated 05.10.1992 has not been proved. The respondent-plaintiff set up another Will dated 22.2.2000 in favour of his son, but it was alleged to have been cancelled. Will was surrounded by suspicious circumstances which has not been noticed by the Courts below in decreeing the suit.

He further submits that both the parties are brothers and they are entitled to equal shares in the property and the property is deemed to have been inherited by natural succession instead of relying upon the Will.

Mr. Vishwajeet Singh, learned counsel submits that all the attesting witness to the cancellation of the previous Will vide Cancellation Deed dated 05.10.1992 have deposed in the same manner and mode. Subsequent Will has been proved in accordance with law. The appellant-defendant has not been able to lead any evidence to rebut the same, rightly so, the suit has been decreed.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is no force and merit in the submission of Mr. Kaushal, for, respondent-plaintiff has proved the Will (Ex.P1), through Deed Writer Chaman Lal PW2 and previous one vide cancellation deed dated 05.10.1992 through testimony of Chander Mani,

Deed Writer PW3, PW4 Sital Ram, Registration Clerk, much less, the plaintiff himself. PW6 Ravinder Deed Writer has proved the Will dated 17.01.2005. PW7 Tilak Raj being attesting witness has also proved the Will which is in existence. Courts below after examining the oral and documentary evidence found that Will has been validly and legally executed. Defendant has not been able to dispel the veracity and genuinity of the Will. It is not the case of the appellant-defendant that the property at the hands of Swaran Chand was ancestral and could not have executed the Will except for legal necessity.

For the foregoing reasons, I do not find any illegality and perversity in concurrent findings of fact based upon appreciation of oral and documentary evidence, much less, no substantial questions of law arises for determination.

Dismissed.

05.08.2016

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:- **Yes**

Whether reportable:- **Yes/No**