

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

RSA No.4637 of 2012 (O&M)
Date of decision : 01.03.2016

Ranjit Singh

...Appellant

Versus

Mukhtiar Kaur and ors.

...Respondents

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. J.S. Hooda, Advocate for the appellant.

AMIT RAWAL, J. (Oral)

The appellant-plaintiff is aggrieved of the dismissal of the suit seeking declaration that he along with respondent Nos.7 to 10 are having 1/5th share in the estate of Mangal Singh, who, before his death had bequeathed the property by virtue of registered Will dated 07.04.1982.

Mr. J.S. Hooda, learned counsel appearing on behalf of appellant-plaintiff submits that it has come in the evidence that both the aforementioned witnesses i.e. Harbhajan Lal and Gurdial Singh had died. The provision of Section 69 of the Indian Evidence Act has been complied with, as PW2 Shiv Shankar who is scribe of the Will was examined who admitted the Will to be correct and stated that he had put his thumb

impression on it on the asking of attesting testator, thus, there is compliance of Section 63(c) of the Indian Succession Act. However, the suit has been dismissed for want of compliance of provision of Section 69 of Indian Evidence Act and thus urges this Court to formulate the following substantial questions of law as noticed in the memorandum of appeal:-

1. Whether appellant/plaintiff proved the execution of Will Ex.P3 in accordance with the provision of Section 69 of the Indian Evidence Act.?
2. Whether an error of law has been committed by the both the Courts below in their approach while dealing with different provisions of law and even did not care to go through the settled law by this Hon'ble Court as well as by Hon'ble Apex Court?

There is no representation on behalf of respondents. Despite service, no one has put in appearance on behalf of the contesting respondent-sisters of the appellant.

I have heard learned counsel for the appellant and appraised the paper book and of the view that there is force in the submission of Mr. Hooda. It is settled law that in the absence of the attesting witnesses who stated to have died, evidence of the scribe is sufficient to comply with the provision of Sections 68 and 69 of the Indian Evidence Act. PW2 Shiv Shankar deposed vis-a-vis execution of the Will, much less, execution thereof by the testator and on his instructions, the Will aforementioned was registered.

In my view, the appellant-plaintiff has discharged the onus

whereas contesting respondents-defendants failed to lead any corroborative evidence to disprove the registered Will.

Keeping in view the aforementioned facts, judgment and decree of both the Courts below are not sustainable and hereby set aside. Suit of the appellant-plaintiff is decreed. Questions of law as noticed above are answered in favour of appellant-plaintiff and against the respondent-defendants.

Decree sheet be prepared.

Appeal stands allowed.

01.03.2016

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(AMIT RAWAL)
JUDGE