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

RSA-111-2013 (O&M)

Date of decision : 30.08.2016

Anita Rani and others

... Appellants

Versus

Yash Pal

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. G.S. Jaswal, Advocate
for the appellants.

Mr. Ravinder Jain, Advocate
for the respondent.

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?

AMIT RAWAL, J. (ORAL)

The appellants-plaintiffs being the sisters of the respondent-defendant are aggrieved of the judgment and decree of the lower Appellate Court, whereby the suit seeking declaration to the effect that they are owners in possession of 5/6th share in the estate of Avtar Singh, who died intestate, has been dismissed, in essence, the judgment and decree of the trial Court has been set aside.

Mr. G.S. Jaswal, learned counsel appearing on behalf of the appellants-plaintiffs submits that though the trial Court decreed the suit, but the lower Appellate Court has committed illegality and perversity in reversing the well reasoned findings of the trial Court while dismissing the suit. In fact, the Will dated 27.12.2003 (Ex.D-1) propounded by the respondent-defendant suffers from suspicious circumstances as the

respondent-defendant-Yash Pal participated in the execution of the Will. The Will is unregistered. Even though it is stated to have been notarized, but the Notary has not been examined. The other witness DW2-Inder Kumar Grover did not know the language of Urdu. The signatures of Avtar Singh on the Will are in English, whereas the recitals of the same are in Urdu. It has nowhere proved that Avtar Singh knew the Urdu and therefore, appended his signature in English after understanding the contents of the Will. All these factors were kept in the mind of the trial Court while decreeing the suit, but the lower Appellate Court being the last Court of fact, abdicated in discharging the obligation, thus, urges this Court for affirming the findings of the trial Court while setting aside the judgment and decree of the lower Appellate Court and prays for formulation of the substantial questions of law as drawn in the memorandum of appeal.

Mr. Ravinder Jain, learned counsel for the respondent-defendant submits that the property in dispute is a house measuring 250 sq. ft. Avtar Singh till his last abode, was residing with the respondent-defendant. The daughters have been married by Avtar Singh and their interest has been taken care at the time of the marriage. The Will has been proved through one of the attesting witnesses, namely Krishan Lal DW-1, who is the neighbourer, rather there is a compliance of Section 68 of the Indian Evidence Act as Inder Kumar Grover had been examined, but feigned ignorance as to whether his father used to append signatures in Urdu or not. It is the only house which the appellants-plaintiffs are staking claim. The lower Appellate Court being the last Court of fact and law, has rightly reversed the findings of the trial Court, thus, urges this Court for affirming the findings of the lower Appellate Court as no substantial

question of law arises for determination.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no merit and force in the submissions of Mr. G.S. Jaswal, for, both the sisters PW1 and PW2, when appeared in witness box, admitted that their father used to append his signatures in English, but denied the same. If at all it was so, they could have taken the aid of an expert as in the suit between the siblings the onus keeps on shifting. Krishan Lal had been coherent and consistent in his testimony, much less, in cross-examination. He deposed in terms of the provisions of Section 63 (c) of the Indian Succession Act, much less, there is a compliance of Section 68 of the Indian Evidence Act. I am of the view that the Will was not surrounded by suspicious circumstances, rightly so, has been upheld by the lower Appellate Court. The daughters, who have already married and settled in their matrimonial home, should not disturb the settled brother staking claim of only residential house.

For the foregoing reasons, I do not intend to differ with the findings rendered by the lower Appellate Court which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination.

With the aforesaid observations, the appeal is dismissed.

30.08.2016
yogesh

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No