

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

RSA No.1145 of 2016 (O&M)

Date of Decision.22.07.2016

Ramkanwar s/o Sh. Ram Mehar

.....Appellant

Vs.

Pawan Kumar and another

.....Respondents

Present: Mr. Sandeep K. Sharma, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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?

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AMIT RAWAL J. (ORAL)

The appellant-plaintiff is aggrieved of concurrent finding of fact whereby the Courts below have rendered the finding of upholding the Will dated 5.6.1998 Ex.P7 to be valid and genuine.

Mr. Sandeep K. Sharma, learned counsel for the appellant submits that Ram Mehar had allegedly executed a Will dated 05.06.1998 propounded by the respondent-defendant vide which 50% of the share has been bequeathed in favour of the appellant-plaintiff and remaining in favour of the defendant who is not the son of the executant but the son of brother of executant-Ram Mehar. This defies from the natural succession. One of the attesting witnesses Anup Singh in his examination-in-chief recorded in 2011 i.e. after 13 years stated that he had lost his eye sight. The Will has not been proved in accordance with law and as per provisions of 63(C) of Indian Succession Act, the defendant ought to have examined other

attesting witness. Registration of the Will would not discharge the onus of

the propounder, thus, the Courts below have misread the oral and documentary evidence and therefore, urges this Court to formulate the substantial questions of law as culled out in the memorandum of appeal.

I have heard learned counsel for the appellant, appraised the paper book and of the view that in the present case, claim made by the plaintiff is to the succession of estate of Ram Mehar in toto and the plaintiff was in obligation to belie the thumb impression of Ram Mehar appended on the Will. I have gone through the examination-in-chief of Anup Singh. It has not surfaced anywhere that he had lost his eye sight at the time of execution of the Will. The statement was made in the present case in the year 2011 i.e. after 13 years of the execution of the Will. The Will had been read over and explained to the testator and as well as it is in evidence that there was compliance of Section 63(C) of the Indian Succession Act.

There is no force in the submission of learned counsel for the appellant that the defendant ought to have examined the other witness. In my view, there is compliance of provisions of Section 68 of the Indian Evidence Act. Once it has been proved that the defendant No.1 was not son of Ram Mehar but was his brother's son, the onus to prove that the Will was forged and fabricated was on the plaintiff. If the executant-Ram Mehar bequeathed 50% share in favour of the defendant, the plaintiff could have taken steps to belie the authenticity and genuineness of the Will by examining expert to vouch for the genuineness or otherwise of the thumb impression or signature appended by the testators and executant in the document but he failed to discharge the onus as enshrined under Section 101 of the Indian Evidence Act.

In view of the aforementioned reasons, I am of the view that

the findings rendered by the Courts below are based upon appreciation of oral and documentary evidence and no substantial question of law arises for consideration in the second appeal, much less, no ground for interference is made out. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

July 22, 2016
Pankaj*