

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

RSA No.3887 of 2013
Date of decision : 15.09.2016

Pinki

...Appellant

Versus

Ms. Shashi @ Babli and others

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Baljinder Singh, Advocate for the appellants.

Mr. Sarvesh Malik, Advocate for the respondent No.3.

AMIT RAWAL, J. (Oral)

The appellant-defendant No.1 is aggrieved of the concurrent findings of fact, whereby the suit of the respondents-plaintiff seeking declaration that the parties are owner to the extent of 1/4th share in the suit property and the consequential relief of permanent injunction restraining the defendant No.1 from interfering into the peaceful possession as described in the site plan of the disputed property, has been decreed by both the Courts below.

Mr. Baljinder Singh, learned counsel appearing on behalf of appellant-defendant No.1 submits that Kamla Devi was the owner in possession of the house No.28370, Gali No.1, Ward No.28, Near Diggis (Railways) Paras Ram Nagar, Bathinda as fully detailed in the head note. On

account of her demise, she was survived by three daughter and one son. Appellant-defendant No.1 is none else but the daughter of Kamla Devi. Kamla Devi during her lifetime had executed a registered Will dated 09.12.1996 Ex.DW3/1 and bequeathed the property in favour of defendant No.1. The said aforementioned Will was propounded by the defendant in the aforementioned suit. Courts below have rejected/discarded the Will on the premise that it bears the thumb impression of Kamla Devi, whereas the testator used to put her signatures in Hindi. The registered document had gone unrebutted in the absence of any rebuttal evidence and Courts below ought to have drawn the positive inference vis-a-vis Will as it bears endorsement of the said Registrar. Scribe and the attesting witnesses DW4 and DW5 have been examined and their statements have not been shattered, thus urges this Court for formulation of substantial questions of law as culled out in memorandum of appeal.

As per office report, respondent No.1 has been served but there is no representation.

Mr. Sarvesh Malik, learned counsel appearing on behalf of respondent No.3 submits that Will was suffering from suspicious circumstances. Witness deposed that Kamla Devi had not thumbmarked but signed which is contrary to the documentary evidence and rightly so legal representatives of Kamla Devi had been held to be owner to the extent of 1/4th share.

I have heard learned counsel for the parties and appraised the paper book and record of the Courts below particularly submission of DW5 Harbans lal Attesting witness, who in his examination-in-chief stated that

Kamla Devi had appended her signatures on the Will, whereas on cross-examination, he stated that it bears the thumb impression of attesting witnesses, much less, scribe has not deposed in terms of provisions of Section 63(c) of the Indian Succession Act. In fact Will has not been proved. De hors of the fact that Will is registered document, and rightly so, Courts below had declined discretion. In the absence of the same, all the co-owners have been held entitled to the 1/4th share i.e. by way of natural succession.

The findings arrived at by the Courts below based upon appreciation of the oral and documentary evidence.

No ground for interference is made out, much less, no substantial questions of law arises for determination.

Accordingly, present appeal is dismissed.

15.09.2016

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No