

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

RSA No.2702 of 2015 (O&M)

Date of decision:02.02.2016

Pirthipal Singh ... Appellant
Vs.

Jagtar Singh and others ... 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. S.S.Rangi, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

Appellant–defendant, Pirthipal Singh, in civil suit No.49T/5.4.2001, plaintiff in Civil Suit No.1367T/120T dated 5.10.2002, is aggrieved of the judgments and decrees of the Courts below.

Mr. S.S.Rangi, learned counsel for the appellant-plaintiff submits that in the suit declaration and permanent injunction on the ground that previously Harnam Kaur, mother of plaintiff and defendants No.1 to 5 and Kundan Singh-deceased, were owners of the land was claimed. Harnam Kaur died intestate about six year back, in essence, Will dated 14.1.1993 as set by opposite party was no Will in eyes of law and the original Will has not seen the light of the day, much less, the same has not been proved on record, thus, in

the absence of the original Will, the thumb impressions of Harnam Kaur could not be proved. This fact has not been noticed by both the Courts below.

I have heard learned counsel for the appellant and appraised the impugned judgments and decrees of the Courts below.

The Will had been proved through secondary evidence. The said order had attained finality. No effort has been made to assail order in view of the provisions of Order 43 Rule 1A of the Code of Civil Procedure. It is pertinent to mention here that the Regular Second Appeal No.1601 of 2015 filed by Prithipal Singh, defendant in civil suit No.49T dated 05.04.2001 titled as Jagtar Singh and another vs. Prithipal Singh and others which was decided against him had also been dismissed vide order dated 07.12.2015. However, in the said order, due to inadvertence, instead of suit bearing No.49T/05.04.2001, it has wrongly been mentioned as 1367T/120T, much less, it should have been referred as defendant instead of plaintiff. Through secondary evidence, Will in question has been proved, as per the provisions of Section 63(c) of the Indian Succession Act, much less, as per provisions of Section 68 of the Indian Evidence Act.

In view of the aforementioned observations, I do not intend to differ with the findings rendered by both the Courts below, based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination of

this Court.

Accordingly, the appeal is dismissed.

However, the Regular Second Appeal aforementioned against judgment and decree passed in civil suit No.49T has also been dismissed. The defence taken in the aforementioned suit is also a pleading in the second suit and both the suits were consolidated together and decided together and controversy in both suits was regarding the Will which has already been upheld by this Court.

(AMIT RAWAL)
JUDGE

February 02, 2016
savita