

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

RSA No.4217 of 2015 (O&M)

Date of Decision.11.08.2016

Subash Chander son of Bodh Raj

.....Appellant

Vs.

Dass Mal (deceased) through LRs

.....Respondent

Present: Mr. Harminder Singh, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

AMIT RAWAL J. (ORAL)

The appellant-defendant is aggrieved of the decretal of the suit by the trial Court and dismissal of his appeal by the lower Appellate Court whereby respondent-plaintiff had been granted declaration qua ownership and possession in respect of share of Parkash Chand.

Mr. Harminder Singh, learned counsel for the appellant submits that Gopi Chand son of Bachna had three sons namely Dass Mal, Thuru Ram and Prakash Chand. The shop was inherited by three sons. There was one daughter Shanti Devi, who was married. Prakash Chand died on 20.01.2006. The plaintiffs filed the suit on the premise that the defendant had been claiming himself to be successor-in-interest of the shop of Parkash Chand on the basis of the Will dated 26.12.2005. The Will had been proved through the attesting witness Dalip Chand, DW1 and deed writer Dayal Chand, DW-2. Both the witnesses have deposed in terms of provisions of Section 63(c) of the Indian Succession Act and there is compliance of Section 68 of the Indian Evidence Act. The Courts below have disbelieved the Will by holding that age of the paper was different and the Will was not

Will has to be scribed by a regular deed writer. The plaintiffs have not been able to shatter the testimony of the aforementioned witnesses in the cross-examination. Both the Courts below have discarded the Will on the premise that it was not registered. It is also unnecessary to get the Will registered, thus, urges this Court for setting aside of the judgments and decrees under challenge by formulating the substantial questions of law drawn in the memorandum of appeal.

I have heard learned counsel for the appellant and appraised the paper book. During the course of hearing, I called upon the counsel to supply the record of the Courts below. I have gone through the copy of the Will. The first page does not bear alleged thumb impression of Prakash Chand. Even the last page also bears a thumb impression. It appears that it was a thumb impression of Parkash Chand obtained on blank paper which had been used as a Will. Otherwise the first page definitely would have had thumb impression in case Parkash Chand intended to bequeath his share in favour of Subash Chander, who is none else but the grandson of the sister-Shanti Devi. The Will does not disclose the existence of brothers namely Dass Mal and Thuru Ram, plaintiffs. Dalip Chand denied in his examination-in-chief that Parkash Chand was issueless and unmarried or was living with Shanti Devi. No corroborative evidence regarding this fact like ration card, voter card or any other circumstantial or independent witness has been produced.

Both the Courts below noticed the aforementioned facts and I am of the view that the Will was surrounded by suspicious circumstances and I am in full agreement with the finding of the Courts below on this count. However, I am not in agreement with the finding of the trial Court,

upheld by the lower Appellate Court, regarding non-registration of the Will and Will having not been scribed by regular deed writer. It is not essential requirement of law that the Will has to be scribed by regular deed writer. Be that as it may be. I do not find any illegality and perversity in the judgments and decrees passed by both the Courts below, much less, no substantial question of law arises for consideration. No ground for interference is made out. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

August 11, 2016
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No