

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

RSA No.2131 of 2014 (O&M)

Date of decision : 12.04.2016

Chanan Singh and another

...Appellants

Versus

Smt. Puro (deceased through LRs) and another

...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. R.S. Sihota, Sr. Advocate with
Mr. B.R. Rana, Advocate for the appellants.

Mrs. Himani Kapila, Advocate for the respondents.

AMIT RAWAL, J. (Oral)

The appellant-defendants are aggrieved of the judgment and decree of both the Courts below, whereby suit of respondent-plaintiff (since deceased) seeking declaration that she has been held co-sharer in joint owner in possession to the extent of 1/7th share in the land measuring 77 kanals 6 marlas as described in the head note of the suit, has been decreed. However, the relief of permanent injunction has been declined.

Mr. R.S. Sihota, learned Sr. Advocate assisted with Mr. B.R. Rana, Advocate for the appellants submits registered Will is dated

05.03.1987, whereas Pal Singh testator died in the year 2002 and during this period, showed no intention to change the contents of Will. As per the Will, property bequeathed is in favour of his sixth son who was married long time back. Defendant was taken care of at the time of marriage and only claimed to share after the demise of the Pal Singh, whereas attesting witnesses Gurmej Singh has been examined. The findings rendered by the Courts below with regard to the specific plea here is that on bare perusal of the Will, there is spacing. Even the son of scribe, has been examined, who identified the signature of father but later on was not sure about the same. He further submits that over a period of time, a person does not remember the old signature of ancestor but the memory of latest one remain, afresh. Both the Courts below have not noticed the aforementioned fact urges this Court to formulate following substantial question of law:-

1. Whether the judgment and decree of the Will dated 05.03.1987 Ex.D1 surrounded by suspicious circumstances is legal?
2. Whether the Courts below can assume the role of expert without taking the aid of an handwriting/finger writing expert?

Ms. Himani Kapila, learned counsel appearing on behalf of respondents submits that defendant has miserably failed to prove the Will to be genuine. Concurrent finding of fact with regard to the Will being suffering from suspicious circumstances has been arrived at. One of the attesting witnesses stated that it was written later. Such discrepancy and contradiction leaves no manner of doubt that Will was signed on the already available, thumb marked paper. Even from the perusal of the naked eye it is clearly visible that thumb impression was already there and typing work

was done over it afterwards, thus, registration of the Will cannot prove its genuinity, in essence, appellant-defendant has failed to discharge the onus as enshrined under Section 101, much less, imply the provision of Section 68 of the Indian Evidence Act and 63(c) of Indian Succession Act and thus urges this Court for dismissal of the appeal.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is force and substance in the plea of Mr. Sihota, for the reasons that registered Will has been proved through the testimony of son. There is no spacing in the lines. It has been clearly mentioned vis-a-vis the interest of the respondent-plaintiff has been taken care of at the time of marriage. After demise, property has been ordered to be transferred in the name of sixth son in equal share. Stray line in the cross-examination would not render the Will to be suffering from suspicious circumstances. The entire pith and substance of the cross-examination has to be read. Testimony of Gurmej Singh reveals compliance of the provision of Section 63(c) of the Indian Succession Act.

There is another aspect of the matter, during the course of hearing, option was given to the appellants for cross-examination of the thumb impression to the Government approved FSL but the same was not accepted by the respondent which shows that Pal Singh actually executed the Will in favour of the appellant-defendants. Had there being any suspicion in the mind of testator with regard to playing of fraud and misrepresentation, he would have definitely changed the Will as Will is dated 05.03.1987, whereas testator had expired in 2002.

Keeping in view the aforementioned facts and circumstances,

judgment and decree of both the Courts below are set aside.

Questions of law as noticed above are answered in favour of appellants-defendants and against the respondents-plaintiffs.

Appeal stands allowed.

Suit is dismissed in toto.

12.04.2016

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**(AMIT RAWAL)
JUDGE**