

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.5571 of 2015 (O&M)

Date of decision: 05.05.2016

Vijay Kumari

.....Appellant

Vs.

Chand Rani and Others

....Respondents

CORAM:- HON'BLE MR.JUSTICE AMOL RATTAN SINGH

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

Present:- Mr.Sharad Aggarwal, Advocate for
Mr.Naveen Bawa,Advocate, for the appellant.

AMOL RATTAN SINGH, J.

Civil Misc.No.13481-C of 2015

For the reasons stated in the paragraph 2 of the application, the application is allowed and the delay of 60 days in re-filing the appeal is condoned.

RSA No.5571 of 2015

This second appeal has been filed by the daughter of the original plaintiff (being her legal representative) against a judgment of partial reversal by the learned lower appellate Court, i.e. the District Judge, Ludhiana.

In the suit instituted by the plaintiff she sought a declaration to the effect that she was the absolute owner in actual physical possession of house No.B.IX.924 (old)/943 (New), Gulchaman Gali,Sanglan Wala Shivala Road, Ludhiana, measuring

177 sq. yds., the suit property having been fully described in the site plan annexed with the plaint.

The plaintiff, Kamlesh Rani, sought the above declaration on the basis of a will dated 04.06.1996, stated to have been executed by her mother (Smt. Tara Wanti), and having been registered with the Sub-Registrar, Ludhiana, on 10.04.1997.

She further sought a decree of permanent injunction, restraining the defendants from interfering in her possession of the suit property.

The defendants (present respondents) are the late plaintiffs' sister and brother, respectively.

2. Earlier, a 'cross case' had already been filed by the defendants, bearing Civil Suit No.73 of 03.04.2006, against the plaintiff, seeking separate possession by way of partition of the suit property in three equal parts, i.e. a 1/3rd share each, to the two plaintiffs in the 'cross suit' and to Kamlesh Rani, defendant in that suit.

For the sake of the convenience, Kamlesh Rani, plaintiff in Civil Suit No.387 of 01.12.2006, shall be referred to as the plaintiff in this judgment, and the plaintiffs in Civil Suit No.73 of 03.04.2006 shall be hereinafter referred to as the defendants, they being arrayed as such in the suit filed by Kamlesh Rani, out of which this 2nd appeal arises.

3. As per the plaintiff, the suit property had been

purchased by her father, the late Thakur Singh, vide a conveyance deed dated 20.12.1965, registered with the Sub-Registrar, Ludhiana, on 22.03.1966. After the death of Shri Thakur Singh, the suit property was shown to have devolved upon his widow, Tara Wanti and defendant No.2 (son of Thakur Singh and brother of the plaintiff), because the plaintiff and defendant No.1 are stated to have relinquished their respective shares vide their separate affidavits. Thereafter, however, defendant No.2 entered into an agreement dated 14.05.1986, with his mother, registered with the Sub-Registrar, Ludhiana on 14.05.1986, to sell his share of the suit property for Rs.25,000/-, which agreement is stated to have been executed in the presence of witnesses.

It was further averred in the plaint that thereafter, Smt.Tara Wanti executed a valid and legal will (referred to earlier) on 04.06.1996, by which she bequeathed her entire property in favour of the plaintiff, excluding the defendants, in lieu of the services rendered by the plaintiff to her mother. It was further stated that the plaintiff had also given money to her mother for construction of suit property and also got her mother treated while she was suffering from a heart stroke.

Smt.Tara Wanti is stated to have died on 01.11.1996 and thereafter, it was claimed in the suit, that plaintiff Kamlesh Rani became the exclusive owner in actual physical possession of the suit property, on the basis of the aforesaid will. However, the suit

property continued to be recorded in the joint names of the plaintiff and defendant No.2, Madan Lal, i.e. her brother, to the extent of 3/4th and 1/4th share respectively, even though he had ceased to be the owner thereof, in view of the sale agreement with his mother.

4. The plaintiff contended in her suit that defendant No.3 was nurturing a mala fide intention to grab the suit property and refused to admit the claim of the plaintiff as the exclusive owner thereof and had filed a “false and frivolous suit for separate possession while living in the world of fancies and nurturing to catch the moon”, even though he had no right, title or concern with the suit property. Allegedly, one week before filing of the suit by the plaintiff on 01.12.2006, the defendants had threatened to dispossess the plaintiff and had even sent two hoodlums to get her dispossessed. However, the attempt was foiled with the intervention of respectables.

Consequently, the suit was instituted.

5. Upon notice issued to them, the defendants appeared and filed a joint written statement, taking preliminary objections that the suit was liable to be stayed under Section 10 CPC, due to the pendency of the civil suit already filed by the defendants on 01.04.2006 (actually 03.04.2006).

Other than that, preliminary objections with regard to non-maintainability, limitation, suppression of material facts etc., were also taken by the defendants. On merits, they denied the

execution of the will dated 01.11.1996 (actually 04.06.1996) by their mother and submitted that their father and the mother had both died intestate on 23.07.1974 and 01.11.1996 respectively, after which all of them, i.e. the plaintiff and defendants, became joint owners in possession of the suit property.

It was further alleged that the will was a result of a fraud and that their mother was not actually competent to alienate the suit property, it in any case being ancestral in nature, and under the joint ownership and possession of the parties to the suit.

It was further contended that the plaintiff had been requested to partition the suit property by metes and bounds and to deliver the defendants separate possession of their shares, but instead of doing so she had threatened to change the nature of the property and make additions and alterations on it.

6. Upon a replication having been filed by the plaintiff, the following issues were framed by the learned Civil Judge (Jr.Divn.), Ludhiana:-

- (i) Whether the plaintiff is entitled to declaration as prayed for ?OPP.
- (ii) Whether the plaintiff is entitled to permanent injunction as prayed for ?OPP.
- (iii) Whether the suit of the plaintiff as framed is not maintainable in the present form?OPD.
- (iv) Whether proceedings of the suit deserves to be stayed U/S 10 CPC, if so, its effect? OPD.
- (v) Whether the suit of the plaintiff is time barred?

OPD.

- (vi) Whether the plaintiff is guilty of concealing the material facts from the Court? OPD.
- (vii) Whether plaintiff is estopped by her own act and conduct to file the present suit? OPD.
- (viii) Relief.

7. In the suit filed by the defendants, i.e. Civil Suit No.73 of 03.04.2006, seeking partition of the suit property by metes and bounds and thereafter seeking separate possession of each of their shares, the stand was the same as was taken subsequently in their written statement to the plaintiffs' suit.

Similarly, upon notice to the plaintiff/defendants in Civil Suit No.73 of 03.04.2006, she filed a written statement on the same lies on which she subsequently filed her own suit, as discussed above.

A replication was filed by the plaintiffs of that suit and the following issues were framed in Civil Suit No.73 of 03.04.2006, by the learned Civil Judge (Jr.Divn.), Ludhiana:

- (i) Whether the plaintiffs are entitled to separate possession by way of partition of their share from the house in dispute as detailed in the head note of the plaint? OPP.
- (ii) Whether the plaintiffs are entitled to permanent injunction restraining the defendant from changing the nature and existing condition of the property in dispute and further from raising construction overthere? OPD
- (iii) Whether suit is maintainable in the present form? OPD.
- (iv) Whether the suit of plaintiffs is properly valued for the purpose of Court fee and

jurisdiction?OPP.

- (v) Whether the plaintiffs have no cause of action and locus standi to file the present suit?OPD.
- (vi) Whether suit of the plaintiffs is within time” OPP.
- (vii) Relief.

8. Subsequently both the suits were ordered to be consolidated and the evidence already recorded in Civil Suit No.73 of 03.04.2006 was ordered to be considered for the purpose of disposal of both the suits.

9. To prove her case, plaintiff Kamlesh Rani testified as PW-1, reiterating the averments made in her plaint and further tendering the following documents :-

- (i) Notarized copy of conveyance deed as Ex.P-1.
- (ii) Notarized Copy of TS-1 as Ex.P-2.
- (iii) Copy of receipt issued by office of Sub Registrar qua deposit of registration charges as Ex.P-3.
- (iv) Notarized Copy of will dated 04.06.1996 as Ex.P-4.
- (v) Notarized Copy of agreement dated 14.05.1986 as Ex.P-5.
- (vi) Copy of registration certificate of Will as Ex.P-6.
- (vii) Notarized Copy of affidavit executed by Tarawanti as Ex.P-7.
- (viii) Notarized Copy of TS-1 as Ex.P-8.
- (ix) Notarized Copies of Ration Cards as Ex.P-9 and P-10.
- (x) Notarized Copies of water and electricity bill as Exs.P-11 to P-13.
- (xi) Notarized Copy of voter card of the plaintiff as Ex.P-14.
- (xii) Site plan of the suit property as Ex.P-15.

10. In her cross-examination, she stated that the will dated 04.06.1996 bears the left thumb impression of her mother and

admitted that the agreement, Ex.P-5, stated to have been executed by her brother Madan Lal-defendant, was not a registered document. She also admitted that the suit property had not been partitioned.

One Rakesh Kumar who was the attesting witness to the will, appeared as PW-2 and deposed in his examination-in-chief, in favour of the plaintiff, to the effect that it was executed on 04.06.1996 and registered on 10.04.1997 at Ludhiana, in his presence.

Another person, Ravi Sharma, appeared as PW-3 and deposed to the same effect, though in cross-examination he stated that he had no knowledge about the agreement (between the plaintiffs' brother & mother), or as to from whom it was got registered. He also denied knowing as to whether the will bears the signature or the thumb impression of the late Tara Wanti.

10-A One Onkar Singh appeared as PW-4 and also corroborated the plaintiff's case but during cross-examination deposed that he did not know that the house was allotted to Thakur Singh and further stated that the agreement which was executed in his presence, does not bear his signature. He also did not know whether it was a registered agreement or not. He further denied knowledge of whether Tara Wanti had executed any will or not.

11. A clerk in the office of Sub-Registrar, Ludhiana, Veena Arora, appeared as PW-5 and proved on record the will Ex.P4, and also identified the signatures of the Sub-Registrar in whose presence

it was registered.

In cross-examination, this witness stated that the will was registered on an application moved by the plaintiff and both attesting witnesses, i.e. Rakesh Kumar and Gurbachan Singh, had “suffered their statements”. She also deposed that before registration of the will, a publication was effected in a daily Punjabi Newspaper on 21.03.1997 and after a lapse of 15 days, having waited for objections if any, the will was eventually registered on 10.04.1997.

12. Another Clerk in the same office, Balbir Singh, appeared as PW-6 and deposed that the records demanded by the Court had been destroyed due to heavy rains and proved on record a copy of a letter issued by the Sub-Registrar to the Deputy Commissioner, Ludhiana, with regard to the destruction of the record.

One Varun Gagneja testified as PW-8 and proved his report, Ex.P-15, comparing the disputed and standard signatures of Madan Lal, and photographs of the signatures as Ex.P16 to P-21. He opined that the disputed and standard signatures were of the same person.

13. Chand Rani (defendant), testified in terms of her stand, taken by her and her brother in their pleadings in both the suits. In her cross-examination, she admitted that plaintiff Kamlesh Rani was

residing in the house along with her family and also admitted that

after the death of their father, their mother, Tara Wanti, had become the owner of the property. While identifying her brother in Court, she also admitted that they had not challenged the will dated 04.06.1996. She also denied knowledge of whether her brother, Madan Lal, had sold his share to their mother for Rs.25,000/-, by entering into an agreement with their mother on 14.05.1986.

Madan Lal defendant appeared as the next witness and also testified in terms of Chand Ranis' affidavit. In cross-examination, he identified his signatures on Ex.PW2/A and Ex.PX and in fact admitted that Kamlesh Rani had been living on the suit property since 1972.

It is recorded in the judgment of the learned Civil Judge that though further cross-examination of this witness was deferred, however, thereafter he did not turn up to face such cross-examination.

14 One Pawan Kumar, appeared as PW-3 for the defendants (plaintiffs in Civil Suit No.73), corroborating their stand in his examination-in-chief. In cross-examination, he deposed that Tara Wanti was his aunts' (Bhuas') daughter and that only Kamlesh Rani was residing with Tara Wanti till her death. He admitted that due to a dispute between Tara Wanti and her son Madan Lal, the latter started residing separately since 1986.

This witness however stated that he did not know if

Madan Lal had relinquished his share in the suit property after

taking Rs.25,000/- from his mother, as it did not happen in his presence. He also denied knowledge of the will executed by Tara Wanti in favour of Kamlesh Rani.

15. On appraisal of the evidence, the learned Civil Judge held that the execution and registration of the will on 04.06.1996 and 10.04.1997 was duly proved by the attesting witness and the Clerk in the office of Sub-Registrar, Ludhiana, respectively. However, it was further held that the agreement dated 04.05 1986, stated to have been signed between defendant Madan Lal and the mother of the parties, i.e. late the Tara Wanti, was not proved, in view of the fact that it was an unregistered document which created a right in immovable property of a value of more than Rs.100/- and as such, was compulsorily registrable under Section 17(1)(b) of the Indian Registration Act, 1908.

16. More importantly, the learned Civil Judge held that the late Tara Wanti had come into possession of the property from her husband, by way of intestate succession. As such, she could not be held to be the exclusive owner thereof after the death of her husband, Thakur Singh, as his wife and three children, i.e. Tara Wanti and the three persons who are parties to the present lis, would succeed to the property to the extent of a 1/4th share each. Hence, the learned Civil Judge finally held that Tara Wanti could at best have willed away her own share of the property and since the will was duly proved, especially, in the circumstances that, admittedly,

out of Tara Wanti's three children, only plaintiff Kamlesh Rani was living with her for at least 10 years before her death, i.e. since 1986, (hence, the will was otherwise also, believable).

17. Consequently, the suit of plaintiff Kamlesh Rani, i.e. Civil Suit No.387 of 01.12.2006, was decreed in her favour to the extent of a half share of the property, i.e. the 1/4th share that Tara Wanti was competent to will in her daughter's favour, as also the 1/4th share that devolved upon Kamlesh Rani herself from her father. The suit filed by the defendants, i.e. Civil Suit No.73 of 03.04.2006, was also decreed by way of a preliminary decree to the effect that they were held entitled to a 1/4th share each, in the remaining half of the suit property.

18 Against the aforesaid judgment and decree of the learned Civil Judge, Chand Rani and Madan Lal filed an appeal before the learned District Judge, Ludhiana.

That Court, after considering the evidence and the judgment and decrees of the Court below, came to the conclusion that even the will of Tara Wanti was not fully proved, in terms of Section 68 of the Indian Evidence Act 1872, inasmuch as, though one of the attesting witnesses, i.e. Rakesh Kumar, PW-2, had testified in examination in chief, he had never subjected himself to cross-examination. Hence, holding that the will, being a contested will, not having been validly proved, even the 1/4th share of Tara

Wanti could not pass on exclusively to her daughter Kamlesh Rani

and would devolve equally upon her three children.

Consequently, the appeal of the defendants in Civil Suit No.387 of 01.12.2006 (plaintiffs in Civil Suit No.73 of 2006), was allowed by the learned first appellate Court and the suit filed by Kamlesh Rani was dismissed, with her being restrained from altering the existing condition/nature of the property, till its partition (in equal shares) by metes and bounds.

19. Now, in this regular second appeal, learned counsel for the appellant has made a very strenuous effort to try and show that the will executed by the late Tara Wanti, in favour of the plaintiff-Kamlesh Rani (now represented by her legal heir), was a validly executed will, duly proved, which the learned Civil Judge (Jr. Divn.), Ludhiana, correctly held to be genuine, inasmuch as, there was no dispute with regard to the thumb impression of Tara Wanti, and one of the attesting witnesses, Rakesh Kumar, had duly appeared and testified in favour of the will having been executed by Tara Wanti.

Learned counsel for the appellant thereafter pointed to the fact that the learned Civil Judge had relied upon the testimony of one Ravi Sharma (who appeared as PW-3), and also testified, as contended, in favour of the will.

20. Having heard learned counsel, I find myself unable to agree with the argument raised.

The will of Tara Wanti has been discarded as not duly

proved by the learned lower appellate Court, on the ground that the aforesaid Rakesh Kumar, though undoubtedly shown as one of the attesting witnesses, did not subject himself to cross-examination.

When a witness has not subjected himself to cross-examination, his testimony in examination-in-chief is to be discarded.

In this regard, Section 137 of the Indian Evidence Act , 1872, can be referred to, which reads as under:

“Examination-in-chief.—The examination of a witness by the party who calls him shall be called his examination-in-chief.

Cross-examination.—The examination of a witness by the adverse party shall be called his cross-examination.

Re-examination.—The examination of a witness, subsequent to the cross-examination by the party who called him, shall be called his re-examination.”

Thus, the testimony of a witness comprises of three parts as per the aforesaid provision, unless the adverse party gives up its right to cross-examination. Hence, when an adverse party wishes to cross-examine the witness and he does not subject himself to such cross-examination, the testimony of that witness, in examination-in-chief also, has to be discarded.

Reference in this regard can also be made to the judgment of the Supreme Court in Ameer Trading Corporation Ltd.

Shapoorji Data Processing Ltd. 2004 (1) SCC 702, wherein it was held that examination of a witness would include examination in chief, cross-examination and re-examination.

Though the issue in that case was different, however even on first principle, reference to sub Rule 2 of Rule 4 of Order XVIII of the Code of Civil Civil Procedure, 1908, can be made, which reads as under:-

“The evidence (cross-examination and re-examination) of the witness in attendance, whose evidence (examination-in-chief) by affidavit has been furnished to the Court shall be taken either by the Court or by the Commissioner appointed by it.”

Thus, to repeat, unless the adverse party gives up its right to such cross-examination of a witness, it is a necessary part of the testimony of a witness, without which the adversary party loses a valuable right to question the witness with regard to his deposition in his examination-in-chief, (whether on affidavit or otherwise).

21. Hence, the learned counsels' contention that the will, having been registered and one of the attesting witnesses having at least stood in testimony in favour of it in examination-in-chief, is an argument which cannot be accepted.

That being so, I see no error in the judgment of the learned lower appellate Court in discarding the testimony of the aforesaid witness, as regards his examination-in-chief.

22. The contention that the will stood proved by Ravi Sharma, is also unsustainable, in view of the fact that firstly, the said Ravi Sharma is not an attesting witness to the will, a photocopy of which has been produced in Court today by the learned counsel. The other witness shown in the will (other than PW-2 Rakesh Kumar), is somebody other than Ravi Sharma. That other witness, admittedly, never stepped into the witness box.

Secondly, Ravi Sharma, as noticed in para 15 of the judgment of the learned Civil Judge, admitted that he did not know as to whether the will bore the signatures or thumb impression of Tara Wanti.

Other than that, in any case, in the face of the fact that the aforesaid Ravi Sharma was not an attesting witness to the will, therefore, in terms of Section 68 of the Indian Evidence Act, 1872, a will cannot be proved only because it has been registered, in terms of the proviso to the aforesaid section.

23. In this regard, Section 68 of the Indian Evidence Act, needs to be referred to and is reproduced hereunder:-

**“Proof of execution of document
required by law to be attested.—**If a document is
required by law to be attested, it shall not be used as
evidence until one attesting witness at least has been
called for the purpose of proving its execution, if there
be an attesting witness alive, and subject to the process

of the Court and capable of giving evidence:

Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.”

(Emphasis applied by this Court)

Undoubtedly, the will in question, of Tara Wanti, was a registered will, though registered after her death, she having died in November, 1996, with the will registered on 10.04.1997. Despite its registration, execution of the Will by Tara Wanti was specifically denied by the defendants (present respondents), i.e. her two children other than plaintiff Kamlesh Rani. Hence, the registered will having been denied, then, as per the proviso to Section 68, it was still required to be proved by way of an attesting witnesses testifying to the fact that it was actually executed by the person by whom it was purported to have been executed, i.e. by Tara Wanti.

In this regard, a judgment of the Supreme Court in **Bhagat Ram Vs. Suresh** (2003) 12 SCC 35, can be referred to. In that case, one of the questions that arose before their Lordships was exactly the same as arises in the present appeal, as to whether once a will has been duly registered, the need for proving its execution in the manner provided in Section 68 of the Evidence Act, is dispensed with or not.

The Supreme Court, while answering the question, held as follows:-

“21. Registration of a document does not dispense with the need of proving the execution and attestation of a document which is required by law to be proved in the manner as provided in Section 68 of the Evidence Act. Under Section 58 of the Registration Act the Registrar shall endorse the following particulars on every document admitted to registration:

- (1) the date, hour and place of presentation of the document for registration;
- (2) the signature and addition of every person admitting the execution of the document, and, if such execution has been admitted by the representative, assign or agent of any person, the signature and addition of such representative, assign or agent;
- (3) the signature and addition of every person examined in reference to such document under any of the provisions of this Act; and
- (4) any payment of money or delivery of goods made in the presence of the registering officer in reference to the execution of the document, and any admission of receipt of consideration, in

whole or in part, made in his presence in reference to such execution.

22. A Registrar of Deeds before he be termed an attesting witness, shall have to be called in he witness box. The court must feel satisfied by his testimony that what he did satisfies the requirement of being an attesting witness. This is the view taken by the High Court of Punjab in the several decisions cited by the learned counsel for the appellants and also in the Division Bench of the High Court of Calcutta in *Earnest Bento Souza v. Johan Francis Souza & Ors.*, *AIR 1958 Calcutta 440*, and of the Orissa High Court in *Kotni R.N. Subudhi v. V.R.L. Murthy Raju*, *AIR 1961 Orissa 190.*”

Thus, if an attesting witness is not examined as per the strict requirement of Section 68 of the Evidence Act, then at least the Registrar of Deeds is required to be examined, to testify to the fact that the will was also admitted to have been executed in the manner given in Section 58 of the Registration Act, by those admitting to its execution before the Registrar, at the time of its registration.

In the present case, that necessity, of examination of the Registrar concerned, was also not fulfilled, with the Registrar not having been examined by the plaintiff. Hence, the will of the late

Tara Wanti cannot be held to have been duly proved.

24. Though otherwise I do not find any flaw with the reasoning of the learned Civil Judge, that Kamlesh Rani having lived with her mother since 1986, with her two other children not living with her, it would not be unnatural for Tara Wanti to will away whatever she perceived to be her property, to the daughter who was living with her, i.e. Kamlesh Rani. However, the fact remains that even so, a will which is contested, has to be proved by the testimony of one attesting witness thereto, if he is alive, in terms of the proviso to Section 68 of the Evidence Act. No doubt, witnesses being won over is not an uncommon phenomenon, yet, however, with the statutory provision existing as it stands, and the Registrar also not having been examined, to testify in respect of any endorsements made on the will, as are required to be made under Section 58 of the Registration Act, obviously the will had to be proved in the manner in which it is statutorily required to be proved.

25. As regards the reasoning of the Civil Judge, with that Court accepting the will to be proved, that Tara Wanti even then could have willed away only the 1/4th share that devolved upon her after her husbands' death, that too was correct reasoning, if the will stood proved. Thus, if the will had been proved, plaintiff Kamlesh Rani would have been entitled to the 1/4th share of Tara Wanti, as also her (Kamlesh Rani's) own 1/4th share in the suit

property, as devolved upon her from her father. She still would not have had any right or title to the remaining half of the suit property, as had devolved upon her brother and sister to the extent of a 1/4th share each, also from their father.

However, with the will of Tara Wanti not validly proved, as discussed, the suit property necessary had to devolve in equal shares upon the plaintiff and the defendants, after the death of their mother (Tara Wanti).

26. Coming next to the issue that defendant Madan Lal had relinquished/sold his share in the suit property in favour of his mother (Kamlesh Rani), vide an agreement dated 14.05.1986.

The question of whether the agreement was required to be registered or not loses significance in view of the fact that even if it had been shown to be a duly proved document (which was not proved), it would make no difference because the agreement in any case gave Madan Lals' share to his mother, Tara Wanti. Thus, for that share also to be available to the plaintiff, by virtue of her mother, Tara Wantis' will, the will itself had to be proved, which it has not been. Therefore, with Tara Wanti deemed to have died intestate, all her share in the property would still devolve upon her 3 children equally, even upon the son who had relinquished his share in her favour earlier.

27. Hence, to conclude, of the six questions of law framed by the learned counsel for the appellant, the only one which actually

requires consideration by this Court, as a substantial question of law, is as to whether a registered will can be held to have been proved, even without the testimony of the attesting witness?

The other question which, though not framed by the learned counsel, would be as to whether the testimony of a witness, who has deposed in his examination-in-chief, but did not subject himself to cross-examination, can be accepted, only on the basis of such examination-in-chief?

In view of what has already been held hereinabove, while discussing these issues, both the questions of law are answered in the negative and thus, against the contentions raised on behalf of the appellant.

28. Thus, for the aforesaid reasons, that the attesting witness to Tarawantis' will did not subject himself to cross-examination, and no other attesting witness, or the Registrar, ever testified in favour of the will, the will has to be held to be not duly proved, it being a contested will.

Therefore, I find no error in the judgment of the learned lower appellate Court.

Consequently, the appeal is dismissed in limine, with no order as to costs.

Civil Misc.No.13482-C of 2015

For the reason that the appeal has been dismissed on

merits, in limine, the issue of condonation of the delay of 14 days in filing the appeal, is rendered academic and is not gone into, even though the delay in re-filing the appeal has been condoned by this Court, it not being necessary to issue notice to the respondents in that application, and the merits of that application having been accepted by this Court.

05.05.2016
anil

(Amol Rattan Singh)
Judge