

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

RSA No.893 of 2016

Date of Decision.20.10.2016

Harish Sharma and another

.....Appellants

Vs

Perma Nand Sharma and others

.....Respondents

Present: Mr. Aman Bansal, Advocate
for the appellants.

Mr. Ashdeep Singh, Advocate
for respondent No.1.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

The appellants-defendant Nos.3 and 4, beneficiaries of the Will dated 7.6.2000, are aggrieved of the findings on issue Nos.2 and 3 in the suit filed by the respondent-plaintiff seeking declaration that the plaintiff is joint owner in possession to the extent of 1/3rd share in the ancestral property mentioned therein.

Mr. Aman Bansal, learned counsel appearing for the appellants submits that Harnama was the owner of the suit property. During his life time, he had no doubt executed a Will dated 10.02.1999 vide which all his three sons namely Parma Nand Sharma, Ved Vyas Sharma and Sukhdev Sharma i.e. plaintiff and defendant Nos.1 and 2 respectively were given 1/3rd share each, as the daughters had been taken care at the time of marriage. However, the aforementioned Will was cancelled vide registered document dated 7.6.2000 and registered Will, of the same date, was executed which was thumb marked. The Sarpanch and Ram Bhaj, attesting

registration of the Will. Execution of the Will always leads to deviation from the line of succession and therefore, there is no necessity for the testator to assign the reasons. It is a common practice that a person who has grown old, cannot put the signatures. Adverse inference cannot be drawn in case he appended his thumb mark.

In support of his contention, he relies upon the ratio decidendi culled out from the judgment of Hon'ble Supreme Court in Misri Lal (dead) by LRs and another Vs. Smt. Daulati Devi and another 1997(2) Apex Court Journal 323. It is the appellants who were rendering service to the deceased Harnama and it is out of love and affection, the property had been bequeathed in their favour. The defendant Nos.1 and 2 did not object to the same. It is only respondent-plaintiff who was aggrieved of the aforementioned act. Both the Courts below have committed illegality and perversity in discarding the registered Will, thus, urges this Court for setting aside the judgments and decrees passed by the Courts below by formulating the substantial questions of law as drawn in the memorandum of appeal.

Per contra, Mr. Ashdeep, learned counsel appearing for respondent No.1 submits that once both the Courts below have discarded the Will, all the siblings would get the share in the property by way of natural succession including daughters. The appellants-defendants No.3 and 4 have propounded the Will dated 7.6.2000 but have not been able to prove the thumb impression as there was no thumb impression of Harnama was available, as he used to sign. It is only a gap of 16 months between the execution of the Will and cancellation and no medical record has been placed on record to show that he was incapacitated to sign and therefore, appended his thumb impression. All these factors weighed in the mind of

the Courts below, thus, there is no illegality and perversity in the findings rendered by the Courts below.

In rebuttal, Mr. Aman Bansal submitted that it has come on evidence that two years back to the execution of the registered Will, Harnama had suffered a paralytic attack and therefore, keeping in view the same, thumb impression could not have to be treated a suspicious circumstance to discard the Will.

I have heard learned counsel for the parties, appraised the paper book and of the view that the last argument of Mr. Aman Bansal, ex facie, goes against him, for, the previous Will after paralytic attack bore the signatures of the testator. No explanation has come forth for deviating from the signatures to thumb impression or medical report that his condition deteriorated at the time of cancellation of the previous Will and execution of the fresh Will. The execution of Will dated 10.02.1999 has been admitted by Kamal Dev, attesting witness but the original Will was never produced before the Court. Only a certified copy of the same has been exhibited as Ex.P1. The respondent-plaintiff never sought permission of the Court to prove the Will by way of secondary evidence, thus, admission of attesting witness of the Will i.e. Kamal Dev, regarding execution of the Will dated 10.02.1999 is of no use i.e. without production of the original Will.

The appellants-defendant Nos.3 and 4, grand sons, have not been able to lead any evidence that Harnama recited in the Will extra love and affection compelling him to deviate from the line of succession. I am of the view that no harm and prejudice would be caused in case all the siblings i.e. daughters and sons of Harnama succeed to his estate by way of natural succession as issue No.1, regarding execution of previous Will dated

10.02.1999 in favour of plaintiff and subsequent Will dated 7.6.2000, has been discarded by both the Courts below.

There is no dispute with regard to ratio decidendi in **Misri Lal's case** referred to above but as the facts as noticed above, it does not help the appellants to lend support to their averments.

For the foregoing reasons, the judgments and decrees passed by the Courts below are upheld as the same are based upon correct appreciation of fact and law, much less, there is no substantial question of law arises for consideration. No ground for interference is made out. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

October 20, 2016
Pankaj*