

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

R.S.A. NO.6320 OF 2014

DATE OF DECISION: MAY 20, 2016

Inderjit Kaur and another

.....Appellants

VERSUS

Paramvir Singh and others

....Respondents

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

**Present: Mr. Jitender Singh Dadwal, Advocate,
for the appellants.**

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgement and decree dated 29.02.2012 passed by Civil Judge (Junior Division), Mukeria, whereby the suit for declaration preferred by the appellant-plaintiffs to the effect that they and respondent-defendants are joint owners in possession of 50 kanals 10 marlas of land situated in Village Tanda Ram Sahal, H.B. No.246, Tehsil Mukerian, as detailed in the suit and the jamabandi for the year 1999-2000, wherein the recorded share was contrary to the actual share was wrong, null, void and illegal, has been dismissed holding that the registered will dated 28.02.1978 executed by Smt.Lachho, which was the basis of the claim, has been rejected on the ground that the said will was duly cancelled by the subsequent registered will dated 05.03.1993, which was executed by said

Smt.Lachho, according to which Mohinder Kaur alone was to be the

successor of the property, which has been found to be duly executed and proved on record, appeal against which preferred by the appellant-plaintiffs has also been dismissed by the Additional District Judge, Hoshiarpur on 22.07.2014.

It is the contention of learned counsel for the appellants that due execution of the second will dated 05.03.1993 has not been proved and there are suspicious circumstances, which shrouded the same. He contends that at the time of execution of second will, the age of the executress, Smt.Lachho, was 84 years, as has been recorded in the said will. Apart from that, the scribe has not been produced and there is gap between the thumb impression and where the writing ends. He contends that attesting witness has also not been able to prove the fact as to how the will was executed by her. Thus, he contends that the impugned judgements and decree passed by the Courts below cannot sustain and deserves to be set-aside.

I have considered the submissions made by learned counsel for the appellants and with his able assistance have gone through the impugned judgements.

The claim of the appellant-plaintiffs is based upon the registered will dated 28.02.1978 as executed by Smt.Lachho. However, the plea, which has been taken and the defence as projected by the respondent-defendants, is a registered will dated 05.03.1993 again executed by Smt.Lachho, wherein she had specifically stated that earlier will executed by her on 28.02.1978 stands cancelled. Merely because her age has been mentioned as 84 years in the subsequent will does not *ipsofacto* render the will suspicious, especially when no evidence has come on record, which would indicate that she was not in a sound disposing mind. The attesting

witness (DW1) has specifically stated that she was in a sound disposing mind and further that the will was executed in his presence and was scribed by Balwinder Singh as per the instructions of Smt.Lachho and the same was read over in his presence and the thumb impressions were obtained in the presence of the witnesses after Smt.Lachho had admitted the contents of the same to be correct. That apart, the other attesting witness, namely, Ranjit Singh, appeared as DW2 and has also supported the due execution of the will. Both the attesting witnesses having deposed in favour of subsequent will dated 05.03.1993, the same has been duly proved to have been executed when there is nothing in their cross-examination to disbelieve them.

The assertion of counsel for the appellants that there is some gap between the writing in the will and the thumb impressions, the same stands dispelled in the light of the fact that the will dated 05.03.1993 is a registered one, where the Registrar has, in his endorsement, stated that it was done in his presence and that the thumb impressions were also put by her in his presence. The authenticity of the will, therefore, cannot be doubted. The findings, as recorded by the Courts below, being in accordance with law do not call for any interference by this Court, especially when the same are based on proper appreciation of the pleadings and the evidence brought on record.

No other point has been argued by learned counsel for the appellant-plaintiff.

Both the Courts below have returned concurrent findings after properly appreciating the pleadings and evidence brought on record by the parties and the same cannot be interfered with as there is no perversity or illegality in the same.

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No substantial question of law is involved in the present appeal.

Therefore, finding no merit in the appeal, the same stands dismissed.

**May 20, 2016
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**(AUGUSTINE GEORGE MASIH)
JUDGE**