

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

**RSA No.287 of 1991 (O&M)
Date of Order:14.02.2018**

Jarnail Singh and another

..Appellants

Versus

Pal Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. G.S.Punia, Sr. Advocate, with
Ms. Harpreet Kaur, Advocate,
for the appellants.

Mr. Amit Jain, Advocate,
for the respondents.

ANIL KSHETARPAL, J.

Plaintiffs-appellants are in regular second appeal against the concurrent findings of fact arrived at by the courts below.

The question which needs consideration is:-

“whether the evidence of a Sub-Registrar and the scribe can be relied upon to prove the execution of a registered Will in accordance with Section 69 of the Evidence Act, 1872, particularly when Sub-Registrar personally knows the executant and the attesting witness?

Estate of Asa Ram, predecessor-in-interest of the parties, who died on 06.11.1984, is in dispute. Asa Ram executed a registered will on 28.02.1983, giving ½ share of the property to defendants no.1 and 2 i.e. his sons Pal Singh and Kashmira Singh and remaining ½ share of the property to Jarnail Singh plaintiff no.1, Kehar Singh plaintiff no.2, Harnek Singh,

defendant no.3 and Kartar Kaur defendant no.4, widow. Whereas the defendants had set up a registered Will dated 07.10.1983, bequeathing the property in a different manner amongst children.

It may be significant to note that the registered Will dated 07.10.1983 do make a reference to earlier Will dated 28.02.1983 and cancels the previous one. It is further not in dispute that none of the attesting witness of the Will dated 07.10.1983 has been examined as one attesting witness, namely, Baldev Singh had died whereas other attesting witness i.e. Jaswant Singh has been shifted to foreign country. On this aspect, statement of defendant was not challenged in cross-examination.

Defendants have not disputed the genuineness of the Will dated 28.02.1983. However, it is their case that the Will dated 28.02.1983 stands superseded by a registered Will dated 07.10.1983. Defendants in order to prove the Will dated 07.10.1983, have examined himself as DW1, scribe of the Will Mangat Rai as DW3, Sh. Sant Ram, the Sub-Registrar as DW4 before whom the registration of the Will dated 07.10.1983 took place. It is also not in dispute that Scribe DW3, although, states that he had read over the Will after scribing to the testator and attesting witnesses, the testator and the witness had signed in his presence, however, he admitted that he does not know personally either the testator or the attesting witnesses. Defendants have also examined Sh. Sant Ram, the Sub-Registrar, who stated that he knew the testator and one of the attesting witness i.e Jaswant Singh, since the testator was the chowkidar of the village and Jaswant Singh was lambardar. He has stated that the Will was read over to the testator and the testator acknowledged the correctness of the Will. He further stated that the testator and attesting witness i.e. Jaswant Singh had

put their respective thumb impression and signature in his presence. He further stated that he identifies the signatures of the Lambardar i.e. Jaswant Singh on the Will. However, in cross-examination, Sant Ram, DW4 stated that execution of the Will did not take place in his presence.

In the present case, one of the attesting witness Baldev Singh has died and the second witness Jaswant Singh had shifted to the foreign country, thus, Section 68 of the Evidence Act is not applicable. The party propounding the Will in the absence of availability of the attesting witnesses is to prove the Will in accordance with Section 69 of the Evidence Act, 1872. Section 69 reads as under:-

69. Proof where no attesting witness found.—*If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the hand writing of that person.*

That on careful reading of Section 69 of the Evidence Act, 1872, it is clear that before a Will can be said to have been proved, the propounder has to satisfy two requirements:-

- (i) attestation of one attesting witness at least is in his hand writing;
- (ii) the signatures of the person executing the document is in the hand writing of that person or in other words, signature of testator in his hand is to be proved.

In the present case, Sub-Registrar Sant Ram has appeared in the witness box as DW4. He has stated that he knew the testator as he was Chowkidar of the village and he also personally knew Jaswant Singh because he was Lambardar of the village. He further stated that the Will was read over to the testator and the testator had acknowledged the correctness of the same. He has further submitted that the testator and the attesting witness signed the endorsement at the time of registration. He also identified the signatures of Lambardar on the Will.

Still further, scribe Mangat Rai has been examined and he has stated that after scribing the Will, it was read over to the testator and thereafter the testator and both the attesting witnesses had put their signatures/thumb impressions. He has further stated that the testator and the attesting witnesses have also put their thumb impressions in his register, which he had brought in the Court.

In the considered opinion of this Court, requirement of Section 69 of the Evidence Act, 1872 stands fulfilled. The attestation by one attesting witness i.e. Jaswant Singh is proved with the statement of Sant Ram, Sub-Registrar, who has stated that he personally knew Jaswant Singh being Lambardar of the Village. Similarly through the same evidence of Sant Ram, Sub-Registrar, thumb impression of executant Asa Ram is also proved because Sub-Registrar has stated that the Will was read over to the testator and the testator acknowledged its correctness and put his thumb impressions on the endorsement at the time of registration. The scribe Mangat Rai has also stated the same thing. Reliance in this regard can be placed on judgment of the Hon'ble Supreme Court reported as **Ved Mitra**

Verma v. Dharma Deo Verma, (2014) 15 SCC 578.

Hence, the question of law framed is answered in favour of the respondents.

In view thereof, there is no scope for interference in the concurrent findings of fact arrived at by the Courts below.

The regular second appeal is dismissed.

February 14, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No