

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

**RSA No.196 OF 1994 (O&M)
Date of Order: 24.07.2018**

Manjit Kaur

..Appellant

Versus

Jarnail Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sarwan Singh, Sr. Advocate, with
Mr. N.S.Rapri, Advocate,
for the appellant.

Mr. Ravi Kapur, Advocate,
for the respondent.

ANIL KSHETARPAL, J(Oral)

Defendant-appellant is in the regular second appeal against the concurrent findings of fact arrived at by both the courts below.

The dispute in the present case is with regard to the estate of late Sh. Bujha Singh, who died on 16.11.1978. He had one daughter i.e. Manjit Kaur, the appellant. She was married to Chain Singh by her father. She was settled in England. Chain Singh had died. He had left behind a testament in which it is mentioned that she started living with some other person against the wishes of the father. Therefore, the executor is not bequeathing any property in favour of her sole daughter. Late Sh. Bujha Singh is stated to have executed a Will in favour of sister's son Jarnail Singh.

Both the courts after examination of the evidence have upheld the Will (testament) and decreed the suit filed by Jarnail Singh.

Testament has been proved by examination of attesting witnesses Rakha Singh, PW3 and Jasbir Singh, the scribe. The other attesting witness, namely, Amar Kaur had died.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by both the courts below and the record. It may be noted that the record forwarded by the subordinate court is not complete and, therefore, photocopy of the record was produced by the counsels, correctness whereof is not being disputed.

Learned senior counsel for the appellant while reading the statement of Jarnail Singh, Rakha Singh and Jasbir Singh, have submitted that such witnesses does not prove due execution of the Will. He further submitted that in village Barnala Kalan, Jarnail Singh himself had purchased the property from Manjit Kaur inherited from her father on 12.12.1978 and therefore, the Will set up is forged and fabricated.

On the other hand, learned counsel for the respondent has pointed out that the Will-testament was found later on in the brick kiln of the testator and it is thereafter that the plaintiff-respondent came to know of the Will. Hence, he submitted that purchase of property by the plaintiff-respondent from the defendant-appellant cannot be taken as a circumstance against the validity and genuineness of the testament.

In the present case, testament has been proved in accordance with Section 68 of the Indian Evidence Act. Learned counsel for the appellant has read over the statement of Rakha Singh, PW3, the attesting witness. Although, learned senior counsel tried to pick loop-holes in the statement, however, on reading of the statement in entirety, it is proved that

Rakha Singh has successfully proved the execution and attestation of the Will.

Learned senior counsel for the appellant further criticized the statement of Jasbir Singh, the scribe, as he has not maintained any register.

It may be noted that Jasbir Singh does not claim that he is a professional licenced deed writer. The Will is not required to be scribed by a professional licenced deed writer. In the present case, the Will is thumb marked by late Sh. Bujha Singh. He was running a brick kiln. He was not a simpleton villager. On reading the testament, it is proved that late Sh. Bujha Singh was not happy with the defendant-appellant living with some one else after the death of her husband. Cogent reasons have been given by the courts below, which do not require any interference by this Court in exercise of jurisdiction of second appeal.

The regular second appeal is dismissed.

July 24, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No