

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

481

RSA No.2817 of 1994 (O & M)
Date of Decision:27.04.2018

Darbara Singh and others

...Appellants

Versus

Sardari Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. G.S. Brar, Advocate
for the appellants.

Ms. Arshdeep Kaur, Advocate.

Mr. K.K. Garg, Advocate
for respondent No.1.

Mr. S.S. Bhinder, Advocate
for respondent No.3.

ANIL KSHETARPAL, J.(Oral)

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

Dispute in the present case is with regard to the estate left by Anokha Singh. Plaintiffs claim himself to be adopted son and sole owner on the basis of a Will dated 05.08.1976. He filed a suit for declaration and permanent injunction. Defendant contested the suit and pleaded that Anokha Singh was no doubt owner of the suit land but he was not having any child. Defendant further submitted that even if the plaintiff was adopted, plaintiff never lived with Anokha Singh or served him. The correctness of the Will dated 05.08.1976 was also disputed.

file and after noticing the fact that both the witnesses of the Will have been examined, decreed the suit. Courts below have relied upon other documentary evidence led by the plaintiff.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below and the record.

Learned counsel for the appellant has submitted that the document/writing dated 05.08.1976 is not a Will as it has not been styled as a Will. He has submitted that a writing cannot be treated as a Will unless it is styled as a Will. Learned counsel for the parties have read over writing dated 05.08.1976, in open Court. In the aforesaid writing, Anokha Singh has stated that he had adopted plaintiff-respondent - Sardari Singh as his son and he wishes that all his property be inherited by Sardari after his death. As per Indian Succession Act, no particular form of Will/testamentary document has been provided. The requirement of execution of the Will is that the Will should be in writing and thumb marked/signed by the testator and attested by two attesting witnesses. If we test the aforesaid writing dated 05.08.1976, it is clear that the writing is attested by two attesting witnesses and it is thumb marked by Anokha Singh, the testator. Hence, this Court does not find any substance in the argument of learned counsel for the appellant.

Learned counsel for the appellant has further submitted that adoption of Sardari Singh plaintiff-respondent is not proved. Although, this finding would not have any effect on the result of the case. However, learned counsel persisted with the argument. Apart from other evidence,

adopted by him. The plaintiff has also examined 4 witnesses who have stated that the plaintiff was adopted by Anokha Singh and in fact it was Anokha Singh who had got married Sardari Singh, the adopted son.

In view thereof, there is no scope with the concurrent findings of fact.

Hence, the regular second appeal is dismissed.

27.04.2018
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No