

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

RSA No.2144 of 2014 (O&M)

Date of decision : 05.10.2018

Om Parkash and others

...Appellants

Versus

Prem Parkash Sethi

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Kunal Mulwani, Advocate for the appellants.

Mr. Yogesh Sethi, respondent.

ANIL KSHETARPAL, J. (ORAL)

The plaintiffs-appellants are in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below while dismissing their suit for possession and for recovery of mesne profits for use and occupation of the premises.

The estate of late Smt. Shanti Devi who died on 16.07.1999 is in dispute. The plaintiffs claimed that Smt. Shanti Devi executed a Will in favour of her husband Late Sh. Hari Chand Sethi on 25.12.1998 and, thereafter Hari Chand Sethi executed a registered Will in favour of the plaintiffs dated 31.05.2000.

On the other hand, the defendant contested the suit and pleaded that his mother had executed a subsequent Will dated 14.01.1999 in his favour.

The Will dated 14.01.1999 which is the last Will of Smt. Shanti Devi has been proved by examining both the attesting witnesses as DW1 and DW2. This Will is Ex.D1 on the file which runs into three pages and

each page has been signed by late Smt. Shanti Devi.

Learned counsel for the appellants submitted that the Courts below erred in recording a finding that the Will dated 14.01.1999 was required to be challenged. He submitted that in the written statement, the defendant did plead the Will in his favour but particulars of the Will i.e. the date etc. was not mentioned.

No doubt, the observations of the First Appellate Court that the Will was required to be challenged, are erroneous, however, on that short ground, the judgment passed by the Courts can be set aside. Both the Courts have recorded a concurrent finding that the Will dated 14.01.1999 has been proved. It is not in dispute that the Will dated 14.01.1999 was produced by the attesting witness namely DW1 Bhajan Lal on 14.05.2011. Thereafter counsel for the plaintiffs sought adjournment which was granted and Bhajan Lal Khurana DW1 was cross-examined on 11.06.2011. Second attesting witness namely Lal Chand was cross-examined on the same day. Still further, the plaintiffs in rebuttal wanted to lead evidence. An application for permission to lead rebuttal evidence was dismissed. However, the aforesaid order passed by the trial Court was challenged in CR No.7835 of 2011 decided on 24.07.2012. This Court directed the trial Court to send the Will dated 14.01.1999 to Forensic Science Laboratory at Madhuban. On careful perusal of the file, it is apparent that the aforesaid Will was sent to the Forensic Science Laboratory. In the Forensic Science Laboratory, the plaintiffs were requested to produce the documents from which comparison of the signatures can be made. However, the plaintiffs failed to produce any document, rather the counsel for the plaintiffs made a statement that he does

not wants to press for the evidence of Handwriting and Finger Print Expert.

The argument of the learned counsel for the appellants that full particulars of the Will were not disclosed in the written statement, is to be noticed and rejected particularly when the Will has been pleaded in the written statement. The plaintiffs, if had any doubt, could have filed an application calling upon the defendant to immediately produce the Will in the Court. When the Will was produced on 14.05.2011, still the opportunity was given to the plaintiffs by this Court while deciding Civil Revision vide order dated 24.07.2012. The plaintiffs failed to prove that the Will dated 14.01.1999 was not executed by late Smt. Shanti Devi.

Learned counsel for the appellants wanted to draw attention of the Court to certain minor contradictions which in the considered opinion of this Court, cannot be made basis to doubt the genuineness of the Will. The minor contradictions in the oral evidence are bound to occur because the witnesses are examined after considerable period of more than two years from the date of the execution of the Will.

In view of the aforesaid facts, this Court does not find any good ground to interfere with the concurrent findings of fact arrived at by both the Courts below.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

05.10.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No