

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

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**RSA No.664 of 2016 (O&M)
Date of Decision : 16.01.2018**

Kalho

..... Appellant

Versus

Jagir Singh (now deceased) and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Amit Jain, Advocate
for the appellant.

AJAY TEWARI, J. (Oral)

This appeal has been filed against the concurrent judgments of the Courts below dismissing a suit filed by the appellant.

The appellant is the daughter of the testator who originally had 4 brothers and she had claimed that she was entitled to the property in dispute alongwith the other siblings. The claim of the respondents on the other hand was that originally the testator had made a WILL in favour of his 4 sons but later on one of the sons had passed away and that is why after a period of approximately 4 years the testator had executed a fresh registered WILL in which he had bequeathed his property in favour of his 3 surviving sons and the legal heirs of the deceased son.

Both the Courts held that both the WILLS were duly proved and consequently dismissed the suit.

Learned counsel has argued that in this case only one attesting witness appeared but his deposition did not meet the stringent requirements

of Section 63 of the Succession Act, 1965 and of Section 68 of the India Evidence Act, 1872. At this stage it would be necessary to reproduce paragraph 7 of the affidavit in chief which was executed by the attesting witness who had appeared :-

“7. That Karam Singh had brought me to Pathankot for the execution of the Second WILL due to the death of Bhajan Singh. Karam Singh had contacted Bhag Mal the other witness and we three had gone to the Tehsil Premises and Karam Singh asked the scribe Tara Lal to scribe a WILL in favour of his three sons Jagir Singh, Bahadur Singh & Jaswant Singh and Gurnam Singh son of Bhajan Singh in equal shares. On the instructions of Karam Singh, Tara Lal petition Writer scribed a WILL in accordance with the wishes and instructions of Karam Singh in favour of three sons and grand son Gurnam Singh in equal shares. Karam Singh was in full senses and aware of what he is doing. After the scribing of the WILL Tara Lal read over the contents of the WILL to Karam Singh in my presence and presence of the other witness Bhag Mal Lamberdar. Then Karam Singh after admitting the WILL to be correct put his thumb impression in circle (B) and after that we the witnesses put our signatures. The Scribe Tara Lal had also put his signatures etc on the WILL. Tara Lal had also recorded the contents of the WILL in his register of documents and got signed from the Karam Singh and witnesses and handed over the WILL to Karam Singh for registration and Karam Singh with the witnesses had gone to Sub Registrar and Sub Registrar also read over the contents of the WILL to Karam Singh and in the presence of witnesses and Karam Singh admitted the same to be correct and put his Thumb Impression. The WILL is Ex D-3 and is correct and D-4 is the endorsement of the Sub Registrar”.

A perusal of this affidavit shows that the witness had duly stated that the testator had taken the other attesting witness and him to the Tehsil complex and had asked the Scribe to write the WILL in favour of the sons. It was further stated that the testator was in full senses and that after the scribing of the WILL the scribe had read over the contents to the testator in his presence and in the presence of the other witness-Bhag Mal. It was thereafter that the testator after admitting the WILL had put his thumb impression and 'after that we the witnesses put our signatures' .

In my opinion, the requirements of Section 63 of the Succession Act, 1965 and Section 68 of the India Evidence Act, 1872 have been adequately met.

Appeal is dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

(**AJAY TEWARI**)
JUDGE

16.01.2018
Pooja sharma-I

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No