

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

**RSA No.6750 of 2016 (O&M)
Date of Order:14.11.2018**

Harbans Singh

..Appellant

Versus

Malkiat Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

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

Mr. Munish Gupta, Advocate,
for respondent no.1.

ANIL KSHETARPAL, J (Oral)

Plaintiff-appellant is in the regular second appeal against the judgment passed by the learned first appellate court reversing the judgment of the trial court resulting in dismissal of his suit for declaration that he is joint owner in possession of 1/7th share in the property left by late Sh. Narayan Singh, who died on 06.10.1992. Plaintiff has also challenged the validity of the registered Will dated 29.09.1992, executed by late Sh. Narayan Singh, who was issueless, duly signed by his widow Puro @ Bachan Kaur.

Learned trial court had ignored the Will on the ground that the scribe has not been examined and no evidence has been led to prove signatures of other witness namely Joginer Singh. The trial court further held that since name of other legal heirs has not been mentioned and the Will was executed and registered one week before the death, therefore, the

Will is found to be surrounded by suspicious circumstances. Whereas first appellate court after re-appreciating the evidence has found that the Will has been proved in accordance with Section 69 of the Evidence Act as Amar Singh (son of the attesting witness Bhagat Singh) has been examined apart from examining Gurdas Singh, DW4, Sub-Registrar, who has stated that Narayan Singh had thumb marked the will in his presence.

It may be noted here that the present suit was filed after a delay of 19 years from the date of death of Narayan Singh. No cogent explanation has been given as to why the suit was not filed immediately.

Learned counsel for the appellant at the time of arguments has brought to the notice of the court that the dispute arose when the plaintiff as well as the defendants jointly sold the property to one developer and there is a settlement between the parties Ex.D2 with the help of the panchayat, wherein it was agreed that Harbans Singh would be given additional land measuring 27 biswas.

Keeping in view the aforesaid finding which although seriously disputed by learned counsel for the appellant does not require any interference. Validity of the registered will has been doubted for the first time after a period of 19 years. Learned first appellate court has found that both the attesting witnesses of the Will are dead. Hence, Will has to be proved in accordance with Section 69 of the Evidence Act and as noticed above, Amar Singh, son of the attesting witness, has been examined, who had identified his father's thumb impression. Apart therefrom, Gurdas Singh, Sub- Registrar, who registered the Will, has been examined as DW4, has specifically stated that Narayan Singh put his thumb impression in his presence.

In such circumstances, this court does not find any good ground to interfere with the findings of fact arrived at by the first appellate court.

The regular second appeal is dismissed.

November 14, 2018
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(ANIL KSHETARPAL)
JUDGE

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