

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

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**CM-617-18-C-2017 in/and
RSA-279-2017 (O&M)
Date of Decision : 11.07.2018**

Bachan Kaur (deceased) through LR. Ajmer Singh Appellant

Versus

Tarsem Singh Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present :- Mr. K.K. Chaudhary, Advocate
for Mr. A.S. Jattana, Advocate
for the applicant-appellant.

AJAY TEWARI, J. (Oral)

CM-617-18-C-2017

For the reasons recorded, the applications are allowed. Court fee is allowed to be fixed after the expiry of limitation. Delay of 45 days in refiling the appeal is condoned.

RSA-279-2017 (O&M)

This appeal has been filed against the judgment of the lower appellate court reversing that of the trial court and thereby dismissing a suit filed by the predecessor-in-interest of the appellant.

Brief facts of the case are that predecessor-in-interest of the appellant i.e. Bachan Kaur was married to one Jarnail Singh but they had no child. After the death of Jarnail Singh, the predecessor-in-interest of the appellant filed a suit challenging a Will allegedly executed by Jarnail Singh in favour of this brother's grandson Tarsem Singh -

respondent. Admittedly, by the time the case came up for evidence of Jarnail Singh, the original attesting witnesses had died. In those circumstances, the only method of proving the Will was under Section 69 of the Indian Evidence Act. For that purpose, the respondent summoned the bank official from the bank where two witnesses had their account and that bank official produced on record the original account opening forms of those two witnesses which contained their thumb impressions. Those thumb impressions were then got compared by an expert who testified that thumb impressions on the Will were of the persons who had opened the accounts. The trial court, however, discarded that evidence holding that the person before whom the account opening form had been executed was not produced and consequently held that the Will was not proved. The lower appellate court overturned this finding and held that once no doubt was raised before the bank official regarding the identity of the persons who had opened the account (being the witnesses of the Will) and their thumb impressions had been proved by an expert as well as the fact that the scribe & the Sub-Registrar had also appeared was sufficient to prove the Will, more so since the appellant did not examine any expert to controvert that evidence.

Counsel of the appellant has argued that there is no explanation why respondent Tarsem Singh did not examine somebody who was acquainted with the handwriting of the deceased witnesses.

In my considered opinion, the approach of the appellate court was correct while that of the trial court was unusually pedantic and therefore the argument of the counsel for the appellant is also not correct.

Section 69 of the Indian Evidence Act imposes no such limitation but only requires that it must be proved that the attestation of one attesting witness at least is in his own handwriting. The appellate court also noticed that the predecessor-in-interest of the appellant had nowhere doubted the thumb impression of Jarnail Singh on the Will. In the circumstances, no fault can be found with the findings of the lower appellate court.

Appeal is dismissed. No costs.

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

July 11, 2018
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(AJAY TEWARI)
JUDGE

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No