

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

**RSA No.29 of 2017 (O&M)
Date of Order: 27.04.2018**

Sukhwinder Singh and another

..Appellants

Versus

Ranjit Kaur and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. I.P.S.Kohli, Advocate,
for the appellants.

ANIL KSHETARPAL, J(Oral)

Defendants-appellants are in the regular second appeal against the judgment passed by the learned first appellate court.

Plaintiff while filing the suit had challenged the mutation sanctioned on the basis of the alleged will dated 15.02.2004. Learned first appellate court has recorded a finding that the Will-testamentary document has not been proved as per Sections 68 or 69 of the Indian Evidence Act as none of the attesting witness has been examined in the court.

Learned counsel for the appellants has vehemently argued that the court did not frame any issue on the validity of the Will-testamentary document and therefore, no evidence was led.

In the considered opinion of this court, the argument does not have any substance because in the suit itself plaintiff had challenged the validity of the Will-testamentary document by challenging the mutation sanctioned on the basis of the alleged Will dated 15.04.2004.

Defendants were represented by the counsel and they were

aware of their defence. The only defence of the defendants is that the property of Hari Singh would stand bequeathed in their favour on the basis of Will dated 15.02.2004. It is well settled that the propounder of the Will-testamentary document is required to prove that the Will-testamentary document was executed as per the provisions of Section 63 of the Indian Succession Act, 1923 and it is to be proved before the court in accordance with the provisions of Sections 68 or in the alternative Section 69 of the Indian Evidence Act.

Since neither of the attesting witness has been examined nor any evidence has been led to prove that such attesting witness is not available, this Court does not find any good ground to interfere with the judgment passed by the learned first appellate court.

The regular second appeal is dismissed.

April 27, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No