

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA No.2962 of 2017 (O&M)
Date of decision: 16.07.2018

Kulwant Kaur

..... Appellant

Versus

Nishan Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Harsharn Singh Bajwa, Advocate
for the appellant.

ANIL KSHETARPAL, J. (ORAL)

CM-7387-C-2017

Application is allowed and the delay in re-filing the appeal is
condoned.

Main Case

Plaintiff-appellant is in the regular second appeal against the
concurrent finding of fact arrived at by the Courts below.

Dispute in the present case is with regard to the estate of late Sh.
Mohinder Singh who had executed a registered Will dated 05.08.1996
bequeathing his property in favour of his two sons namely Nishan Singh and
Jagdev Singh. The plaintiffs claim that the aforesaid Will propounded by the
two sons is forged and fabricated and Mohinder Singh was not competent to
bequeath the property by way of testamentary disposition as the property was
ancestral co-parcenary property.

Both the Courts after examining the evidence have found that the
defendants have successfully proved the registered testament in accordance
with the provisions of Section 69 of the Evidence Act. Son of the attesting
witness namely Makhan Singh, Nambardar has been examined as DW-3 who

has stated that his father Gurbachan Singh was also Narmbardar who died on 19.01.2001 and he identifies signatures of his father on the testament. Further, defendants have also examined Kashmir Kaur, daughter-in-law of Mohinder Singh. The scribe of the Will has also been examined namely Jagdev Sodhi. Still further, the Courts have found that the plaintiffs have produced no evidence to prove that the property was ancestral in nature. In fact, when the plaintiff appeared in evidence, she admitted that the suit land came to Mohinder Singh from his maternal side.

Learned counsel for the appellant has submitted that the Will is not proved to have been executed in accordance with Section 63 of the Succession Act as other attesting witness was not present when Gurbachan Singh had signed the Will. On careful examination of Section 63 of the Succession Act, 1925, it is apparent that both the attesting witnesses of the Will are not required to be present at the same time. Section 63(c) clearly stipulate that it shall not be necessary that more than one witness be present at the same time. Only requirement is that the Will must be attested by two or more witnesses and each of whom has seen the testator signed or affixed his mark to the Will or has received personal acknowledgment from the testator of his signatures or mark and each witness must sign the Will in the presence of the testator. In the present case, the aforesaid requirements have already been fulfilled.

In view thereof, there is no scope for interference with the concurrent finding of fact arrived at by the Courts below.

Appeal is dismissed.

(ANIL KSHETARPAL)
JUDGE

16.07.2018
Dinesh Bansal

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No