

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

106

**RSA-5357-2017 (O&M)
Date of Decision : 04.07.2018**

Sukhdyal Chand

..... Appellant

Versus

Balbir Chand and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Aayush Gupta, Advocate
for the appellant.

Mr. Vikas Mehsempuri, Advocate
for the caveators-respondents.

AJAY TEWARI, J. (Oral)

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

Counsel for the appellant has defended the judgment of the trial court while attacking that of the lower appellate court. He has argued that the admitted facts are that both the witnesses to the Will had died and to prove their signatures he had examined Harmesh, grandson of Mehnga Ram – attesting witness, and Darshan Lal, son of Gurbachan Ram – attesting witness. Both had corroborated the signatures/thumb impressions of their grand-father and father respectively and that is why the trial court had held that the requirement of Section 69 of the Evidence Act had fulfilled and it had decreed the suit. Moreover, in the Will the

testator had bequeathed his property equally to his wife and three sons and had specifically mentioned that out of his 6 daughters 5 had got married and he had given them everything as per his means. As regards the 6th unmarried daughter, the testator had stated that his sons would be responsible for her marriage etc. He has further argued that the only reason which weighed with the lower appellate court in reversing the judgment of the trial court is the fact that the original Will was not produced on record but actually the fact of the matter was that the respondents had also got lodged an FIR against the appellant and the original Will had been placed by the appellant on that record and the criminal court had acquitted the appellant.

Counsel for the caveators-respondents however points out that this is a strange case where apart from the appellant all the other beneficiaries of the Will have themselves stated that the deceased had not executed any said instrument. Moreover, the counsel for the caveators-respondents points out that the requirement of Section 69 of the Evidence Act cannot be said to be met in the present case because the appellant did not produce any evidence to prove the signatures of the testator and even if the signatures/thumb impressions of the witnesses were proved, unless the signature of the testator was proved the Will could not be held to be established.

In my considered opinion, the arguments of counsel for the caveators-respondents carry more weight. It is trite to say that merely by establishing that the witnesses had attested the document it cannot be held that the document itself has been proved unless the signature of the

executor was also proved. The fact that three out of four beneficiaries have taken stand that no Will was executed also supports the finding of fact returned by the lower appellate court. In the circumstances, I find no merit in the appeal.

Appeal is dismissed.

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

July 04, 2018
ashish

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No