

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

RSA No.778 of 2018 (O&M)

Date of decision: 16.03.2018

Gurdip Singh and others

... Appellants

Versus

Kulwant Singh and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Karanjit Singh, Advocate
for the appellants.

REKHA MITTAL, J. (Oral)

The present appeal directs challenge against judgment and decree dated 07.12.2017 passed by the Additional District Judge, Gurdaspur whereby the appeal preferred by respondent/plaintiff No.2 was allowed, judgment and decree dated 14.07.2015 passed by the Civil Judge (Jr. Div.), Batala dismissing the suit and allowing the counter claim were set aside; suit filed by the plaintiffs was partly decreed to the effect that suit land left behind by Atma Singh is to be inherited by his legal heirs on the basis of natural succession; plaintiffs are co-owners/co-sharers in the suit land and defendants are restrained from alienating suit land more than their share. Counter claim filed by the defendants was dismissed.

In nutshell, present lis pertains to inheritance to the estate of Atma Singh son of Hardit Singh qua suit land, detailed in head note of the

plaint. As per plea of respondent No.1 and his co-plaintiff Piara Singh, Atma Singh died on 25.07.1987 without any child and his estate has been inherited by Piara Singh, Tara Singh, Gurdip Singh, Surjit Singh and Chanan Singh sons of Fauja Singh in equal shares. Tara Singh passed away leaving behind Kulwant Singh respondent No.1/plaintiff as his legal heir. Chanan Singh has also passed away leaving behind defendants No.3 to 9 as his legal heirs. After death of Tara Singh, respondent No.1 has become co-sharer in possession to the extent of 1/5th share. Similarly, after death of Chanan Singh, defendants No.3 to 9 have inherited 1/5th share jointly out of estate left by Atma Singh. The plaintiffs are the co-sharers in possession to the extent of 2/5th share and defendant No.1 is the co-sharer to the extent of 1/5th share and defendants No.3 to 9 are co-sharers to the extent of 1/5th share.

Gurdip Singh and Surjit Singh appellants and Chanan Singh (since deceased) alleged that Atma Singh executed Will dated 16.06.1987 in their favour which is illegal, null and void, forged and fabricated and prepared by them in conspiracy with the scribe and marginal witnesses. Mutation No.2012 sanctioned in their favour vide order dated 16.12.2011 is liable to be set aside.

The trial Court dismissed the suit on the basis of findings recorded on issue Nos.1 to 3, taken up jointly as the Will dated 16.06.1987 propounded by the appellants/defendants was held to be genuine and valid. As has been noticed hereinbefore, judgment and decree passed by the trial

Court were set aside and suit of the plaintiffs was partly decreed, noticed hereinbefore whereas counter claim filed by the appellants/defendants was ordered to be dismissed.

The sole submission made by counsel for the appellants is that one of the attesting witnesses of the Will has passed away and the other attesting witness Parkash Singh is in a foreign country, therefore, both the attesting witnesses could not be examined. The appellants examined Satnam Singh to prove affidavit of Parkash Singh Ex.D2 who also identified signatures of Parkash Singh being one of the attesting witnesses of the Will. The appellants also examined Nirmal Kumar DW2 Vasika Navis, scribe of the Will in question, therefore, the appellants led sufficient evidence to prove the Will in accordance with Section 69 of the Indian Evidence Act, 1872. It is further argued that the Court in appeal has seriously erred by setting aside well founded findings recorded by the trial Court on issue Nos.1 to 3, therefore, the judgment and decree passed by the Court in appeal are liable to be set aside.

Indisputably, the defendants/appellants sought to disinherit Kulwant Singh son of Tara Singh on the basis of Will dated 16.06.1987, purported to be executed by deceased Atma Singh son of Hardit Singh. The trial Court framed issue No.3 to the following effect:-

“Whether Atma Singh executed Will dated 16.06.1987 in favour of defendant?OPD”

There cannot be any dispute about the settled position in law

that the Will is required to be proved by its propounder who is also under legal obligation to dispel suspicious circumstances surrounding the Will.

In the case at hand, plea of the appellants is that one of the attesting witnesses of the Will has passed away and the other witness Parkash Singh is in a foreign country, therefore, was not available for examination.

Section 69 of the Evidence Act deals with proof where no attesting witness found. A relevant extract therefrom reads as follows:-

“If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.”

A careful reading of Section 69 leaves no manner of doubt that if no attesting witness can be found, it must be proved that attestation of one attesting witness at least is in his handwriting and that the signature of the person executing the document is in the handwriting of that person. Counsel for the appellants has urged that attestation of Will by one of the attesting witnesses namely Parkash Singh stands proved in view of testimony of Satnam Singh. However, he has fairly conceded that the appellants have not examined a witness to prove that the Will bears thumb impression of the testator. As the appellants failed to prove thumb impression of the executant of the Will, they have failed to adduce evidence in compliance with the provisions of Section 69 of the Evidence Act. As

soon as the appellants failed to prove the Will in accordance with relevant provisions of the Evidence Act, they cannot assail the judgment and decree passed by the Court in appeal rejecting the Will and holding that estate left behind by Atma Singh would be inherited by his legal heirs on the basis of natural succession.

No other point has been raised.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed in limine.

No order as to costs.

16.03.2018

ashok

(REKHA MITTAL)
JUDGE

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