

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

**RSA No. 834 of 2019 (O&M)
Date of Order: 04.02.2019**

Rajak

..Appellant

Versus

Sohrab

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Satish Chaudhary, Advocate,
for the appellant.

ANIL KSHETARPAL, J(Oral)

Defendant-appellant is in the regular second appeal against the concurrent findings of fact arrived at by the courts below, decreeing the suit filed by the plaintiff for declaration to the effect that he is co-owner to the extent of ½ share in the property left by late Sh. Rustam, father of the plaintiff and the defendant.

Defendant contested the suit and set up a registered Will dated 19.05.2015 in his favour. The status of plaintiff-Sohrab as son was disputed.

Both the courts after examination of the evidence have found that the registered Will has not been proved and as per the birth certificate, Ex.P6, plaintiff is son of late Sh. Rustam.

This court has heard learned counsel for the appellant at length and with his able assistance gone through the judgments passed by the courts below.

Learned counsel for the appellant has drawn attention of the

court to the statement of attesting witness Chhutan. On the reading of the statement, it is apparent that Chhutan while appearing in evidence failed to prove the attestation of the Will in accordance with Section 63(c) of the Indian Evidence Act, 1872. The second attesting witness has not been examined.

Once only one attesting witness has been examined who does not fulfill the requirement that the testator signed in his presence and he signed in the presence of the testator and other attesting witness also signed in his presence. This is mandatory requirement which has not been fulfilled to prove execution of the Will.

Still further, only photocopy of the Will was produced before the learned trial court. Before the first appellate court, application for additional evidence was filed and the Will was produced, however, no effort was made to prove the Will in accordance with Section 68 of the Indian Evidence Act, 1872.

On the second issue with regard to relationship of plaintiff, certificate issued by the Registrar, Deaths and Births, Ex.P6 clearly proves that he was son of late Sh. Rustam.

In view thereof, this court does not find any good ground to interfere with the concurrent findings of fact arrived at by the courts below.

The regular second appeal is dismissed.

February 04, 2019
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No