

234 **IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**RSA No.818 of 2015 (O&M)
Date of Decision: 16.09.2019**

SUBHASH GUPTA

..... Appellant

Versus

AVINASH C. GUPTA AND ORS.

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Akhilesh Kumar Sinha, Advocate
 for the appellant.

 Mr. Harkesh Manuja, Advocate
 for respondent No.1.

SUDIP AHLUWALIA J. (ORAL)

1. It is submitted by Ld. counsel for the appellant that amicable resolution of the dispute between the parties could not be arrived at inspite of best efforts.

2. In such situation, this Court is left with no other appropriate alternative except to adopt the natural and logical course in accordance with law, as a follow up to the observations recorded by a Coordinate Bench of this Court on 20.02.2019.

3. As already noted, the Will relied upon by the respondent-defendant on the basis of which declaration of his share to the extent of 1/6th in the entire properties left behind by the testator Faqir Chand Gupta, does not meet up the basic ingredients of Section 63 (c) of the Indian Succession Act, since it was attested by only one witness. The consequence, therefore, would be that the plaintiff-respondent would have been entitled to his share only in accordance with the normal law of succession, as per the Hindu Succession Act.

4. A submission has been made on behalf of the appellant that in such eventuality the decree passed in favour of the respondent ought not to be modified but he should be made to go in for a fresh round of litigation for claiming his share in the disputed properties. This Court is not in agreement with such submission because irrespective of the validity of the Will relied upon by the respondents, his normal entitlement in accordance with the rules of devolution in case of an intestate cannot be ignored and, thus, considering that the parties are closely related to each other, relegating them to a fresh round of litigation would be altogether undesirable.

5. Consequently, both the judgments of the Ld. Lower Courts are modified to the extent that instead of the respondents being held to be entitled to 1/6th of the share in the property left behind by deceased Faqir Chand Gupta, they will now be entitled to 1/9th share of the same as widow of deceased-Faqir Chand Gupta has expired in the meantime, and so the successors remaining behind are his six sons, including the contesting parties, and three daughters, who were wrongly mentioned as “four” in the earlier order dated 20.02.2019.

6. The decrees passed by the Ld. Courts below accordingly stand modified.

7. The appeal with above observations and modifications of decrees stands disposed off.

16.09.2019

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**(SUDIP AHLUWALIA)
JUDGE**

1. Whether speaking/reasoned: Yes/No
2. Whether reportable: Yes/No