

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

107

RSA-2614-2019(O&M)
Date of decision: 07.01.2020

Paramjit Kaur and others

.....Appellants

Versus

Veer Pal Kaur and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Ms. Aashna Gill, Advocate for the appellants.

ANIL KSHETARPAL, J. (ORAL)

Defendant nos.1 to 3-appellants are in the regular second appeal against the concurrent findings of fact arrived at by the courts below while dismissing the suit filed by the plaintiffs for declaration claiming exclusive ownership in favour of the plaintiffs and defendants no.1 to 3 on the basis of alleged registered Will executed by Malkit Singh on 05.05.1999.

Both the courts below have held that the plaintiffs have only examined Surjit Singh as PW3 (attesting witness of the Will). He in cross-examination has stated that he does not know who had scribed the Will. The Will was also not scribed in his presence. The executant-Malkit Singh also did not sign in his presence. The alleged will was never read over to Malkit Singh in his presence.

In view of this aforesaid deposition of the only attesting witness examined, the courts have dismissed the suit.

This court has heard learned counsel for the appellants at length and with her able assistance gone through the judgments passed by the

courts below and the record of the courts below, requisitioned.

Learned counsel appearing for the appellants has submitted that the statement of the attesting witness Surjit Singh has been misread by the courts below. She further submitted that execution of the Will stands proved in accordance with the provisions of Section 68 of the Evidence Act read with Section 63(c) of the Indian Succession Act. She further submitted that the courts below have erred in overlooking for cross-examination of the attesting witness Surjit Singh before remand of the case in first appeal and, therefore, the courts committed illegality.

This court has considered the submissions, however, find no substance therein.

On careful reading of the examination-in-chief of Surjit Singh, it is apparent that he has not specifically stated that other attesting witness namely Hardev Singh had signed and attested the Will in his presence and he himself had signed and attested the Will in the presence of the other witness, namely, Hardev Singh. In cross-examination, this witness has gone on to depose the facts, noticed above.

In view of the aforesaid statement of the only attesting witness, it would not be appropriate to conclude that the alleged Will has been proved in accordance with the requirements of Section 63(c) of Indian Succession Act, 1925 read with Section 68 of the Indian Evidence Act, 1872. Reference in this regard can be made to a judgment passed by the Hon'ble Supreme Court in the case of **Janki Narayan Bhoir vs. Narayan Namdeo Kadam, (2003) 2 SCC 91**, wherein it was held that if only one attesting witness of the alleged Will has been produced in the Court, he must prove attestation by two attesting witnesses in the manner

contemplated under clause (c) of Section 63 of the Indian Succession Act, 1925. Relevant discussion by the Hon'ble Supreme Court is extracted as under:-

*Section 68 of the Evidence Act speaks of as to how a document required by law to be attested can be proved. According to the said Section, a document required by law to be attested shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving an evidence. It flows from this Section that if there be an attesting witness alive capable of giving evidence and subject to the process of the Court, has to be necessarily examined before the document required by law to be attested can be used in an evidence. On a combined reading of Section 63 of the Succession Act with Section 68 of the Evidence Act, it appears that a person propounding the will has got to prove that the will was duly and validly executed. That cannot be done by simply proving that the signature on the will was that of the testator but must also prove that attestations were also made properly as required by clause (c) of Section 63 of the Succession Act. It is true that Section 68 of Evidence Act does not say that both or all the attesting witnesses must be examined. But at least one attesting witness has to be called for proving due execution of the Will as envisaged in Section 63. Although Section 63 of the Succession Act requires that a will has to be attested at least by two witnesses, Section 68 of the Evidence Act provides that a document, which is required by law to be attested, shall not be used as evidence until one attesting witness at least has been examined for the purpose of proving its due execution if such witness is alive and capable of giving evidence and subject to the process of the Court. In a way, Section 68 gives a concession to those who want to prove and establish a will in a Court of law by examining at least one attesting witness even though will has to be attested at least by two witnesses mandatorily under Section 63 of the Succession Act. **But what is significant and to be noted is that that one attesting witness examined should be in a position to prove the execution of a will. To put in other words, if one attesting witness can prove execution of the will in terms of clause (c) of Section 63, viz., attestation by two attesting witnesses in the manner contemplated therein, the examination of other attesting witness can be dispensed with. The one attesting witness examined, in his evidence has to satisfy the attestation of a will by him and the other***

attesting witness in order to prove there was due execution of the will. If the attesting witness examined besides his attestation does not, in his evidence, satisfy the requirements of attestation of the will by other witness also it falls short of attestation of will at least by two witnesses for the simple reason that the execution of the will does not merely mean the signing of it by the testator but it means fulfilling and proof of all the formalities required under [Section 63](#) of the Succession Act. Where one attesting witness examined to prove the will under [Section 68](#) of the Evidence Act fails to prove the due execution of the will then the other available attesting witness has to be called to supplement his evidence to make it complete in all respects. Where one attesting witness is examined and he fails to prove the attestation of the will by the other witness there will be deficiency in meeting the mandatory requirements of [Section 68](#) of the Evidence Act.”

In view of the aforesaid, there is no ground to interfere.

Dismissed.

January 07, 2020

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(ANIL KSHETARPAL)

JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No