

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

RSA-5022-2014 (O&M)  
Date of decision : 29.01.2020

Harjinder Kaur and others

...Appellants

Versus

Amarjit Kaur and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. Manuj Nagrath, Advocate for the appellants.

Mr. Vipin Mahajan, Advocate for the respondents.

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**ANIL KSHETARPAL, J. (ORAL)**

Defendants-appellants are in the Regular Second Appeal against the concurrent findings of fact arrived at by the Courts below decreeing the suit for joint possession to the extent of 1/8<sup>th</sup> share in the unpartitioned land measuring 148 kanals 6 marlas.

Maghar Singh was owner of the property. On his death, 1/8<sup>th</sup> share of the property left by late Sh. Maghar Singh was inherited by Pritam Kaur @ Harbhajan Kaur who died on 05.01.1989.

Defendants-respondents claimed that they are owners of the property as per the testamentary disposition (Will) executed by Pritam Kaur @ Harbhajan Kaur on 01.01.1989. The plaintiffs are children, grandchildren and widow of pre-deceased son of Pritam Kaur. Both the attesting witnesses of the Will had died and, therefore, the Will was sought to be proved by

examining the Scribe.

Both the Courts, on appreciation of evidence, have found that the defendants-appellants have failed to prove the execution of the Will.

Learned counsel for the appellants has submitted that since both the attesting witnesses had died, therefore, the Will could only be proved in accordance with Section 69 of the Indian Evidence Act, 1872. Hence, he submitted that the Scribe of the Will namely Darshan Singh has supported the case of the defendants. Hence, the Will is proved.

On the other hand, learned counsel for the respondents has pointed out that except examination of Darshan Singh, who is not a licenced Deed Writer, even no effort has been made by the defendants to prove the existence of thumb impression of Pritam Kaur on the alleged testamentary document.

This Court has heard learned counsel for the parties and with their able assistance gone through the judgments passed by the Courts below and the record.

No doubt, since both the attesting witnesses of the Will had died, when the suit came for evidence, therefore, the defendants were left with no choice but to prove the Will in terms of Section 69 of the Evidence Act, however, in the present case, once execution of the Will was disputed, the defendants should have led some evidence to prove the existence of the thumb impression of the testator, which is one of the requirement of Section 69 of the Evidence Act. Still further, on careful reading of the Will, it is apparent that the testator has not mentioned the names of her children. She was blessed with five daughters and a son. Still further, she died on

05.01.1989 after a period of 4 days from the date when allegedly executed the Will. The Will was got registered after a period of approximately 13 years post the death of testator.

In these circumstances, this Court does not find substance in the arguments of learned counsel for the appellants.

Learned counsel for the appellants has further submitted that the Courts below did not frame proper issue with regard to the validity of the Will and, therefore, the defendants stands prejudiced.

In this regard, it may be noticed that learned trial Court as well as First Appellate Court has discussed the entire evidence led by the defendants in order to prove the Will in question and have devoted the major part of their discussion on this aspect. No doubt, Order 14 of the Code of Civil Procedure requires that the Court should frame distinct issue on each proposition of fact asserted by one party and denied by other. However, on such minor defect, the judgments passed by the Courts below cannot be set aside particularly when both the Courts have discussed the evidence and given their decision thereon. Hence, there is no ground to interfere with the concurrent findings of fact arrived at by the Courts below.

Accordingly, the present Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

**29.01.2020**

*Pawan*

**(ANIL KSHETARPAL)  
JUDGE**

**Whether speaking/reasoned:- Yes/No**

**Whether reportable:- Yes/No**