

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

RSA-1565-2021 (O&M)

Date of decision: 21.12.2021

Shiv Parkash and others

....Appellants

Versus

Bhagwati and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Shiv Kumar, Advocate for the appellants

ANIL KSHETARPAL, J (Oral)

The defendants assail the correctness of the concurrent findings of facts arrived at by the courts below, while decreeing the suit filed by respondent no.1 (Bhagwati widow of Late Sh.Kanwar Lal) for grant of decree of declaration, to the effect that the plaintiff is owner in possession of the suit land, detailed in para 3 (i) of the plaint. Late Sh. Kanwar Lal was the common ancestor. The suit was filed by Smt.Bhagwati (plaintiff-respondent herein). The defendants are successor-in-interest of Late Sh.Kanwar Lal. Defendant no.1 to 4 are sons of Late Sh.Kanwar Lal whereas defendant no.5 to 8 are his daughters or the legal representatives of the daughters. Late Sh.Kanwar Lal executed a registered Will on 26.06.2008. Thereafter, he again executed a registered Will dated 02.07.2010, according to which the self acquired property was bequeathed in favour of his widow whereas the ancestral property was bequeathed in favour of his sons. This appeal has been filed by the sons and grandsons of Late Sh.Kanwar Lal, except

Manish (the fourth son). Both the courts, on appreciation of evidence, have recorded a concurrent finding of fact that Smt. Bhagwati has successfully proved the execution of the Will, in accordance with Section 63 of the Indian Succession Act, 1925. The courts have also recorded a finding that the Will has been proved in accordance with Section 68 of the Indian Evidence Act, 1872.

Heard learned counsel for the appellants and with his able assistance perused the paper book. Learned counsel representing the appellants contends that Late Sh.Kanwar Lal while executing the Will dated 02.07.2010 has bequeathed the land under a private passage exclusively in favour of Manish. He further contends that the second attesting witness of the registered Will i.e Sh.Gian Chand did not come forward to face the cross-examination.

As already noticed, Late Sh.Kanwar Lal has bequeathed the ancestral property in favour of his sons in the equal shares.

Keeping in view the facts and circumstances, Late Sh.Kanwar Lal has bequeathed the land under a private passage in favour of his 4th son i.e Manish. The passage has been given in order to enable Manish to visit his orchard.

In the considered view of this Bench, merely because the land under a private passage has been given to one of the sons, is no ground to assail the correctness of a registered Will.

As regards, the second argument, it may be noted here that Sh. Gian Chand, who appeared in evidence as PW2, did not come forward to face cross-examination and in order to secure his presence the

trial court issued a bailable warrant.

The execution and registration of the Will has been proved while Sh.S.G.Vashisht, Advocate, has appeared as PW6. The photograph of the deceased Late Sh.Kanwar Lal is available on the registered Will.

In view thereof, no ground to interfere is made out.

Hence, dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

21.12.2021

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)

JUDGE