

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

CR-3624-2019 (O&M)

Date of decision: 26.07.2022

Pushpa and another

....Petitioners

Versus

Manjit Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms.Ekta Thakur, Advocate for the petitioners
Mr. G.S.Punia, Sr. Advocate with
Mr. Amitoj Singh, Advocate for respondent no.2

ANIL KSHETARPAL, J (Oral)

In a suit for declaration regarding succession of the estate of late Sh.Chetan Singh, the defendants have presented a Will executed in their favour on 10.04.2009. One attesting witness and a scribe have denied their signatures on the Will. When the case was at the stage of defendants' evidence, they sought permission of the court to examine the hand writing expert in order to prove that the plaintiff as well as the attesting witnesses, while appearing before the revenue authorities, have admitted the execution and attestation of the Will. The court has allowed the same.

Heard learned counsel representing the parties at length and with their able assistance perused the paper book.

Learned counsel representing the petitioners contends that the defendants cannot be permitted to examine the hand writing and finger print expert as they are bound to examine the second attesting witness. She relies upon the judgment passed by the Supreme Court in

Janki Narayan Bhoir vs. Narayan Namdeo Kadam 2003 AIR (SC) 761.

Sh. Punia, learned senior counsel points out that the second attesting witness summoned was not found residing at the given address.

The plaintiff has no right to interfere or regulate the manner in which the defendants want to lead their evidence. It is well settled that the propounder of the Will is required to prove the same. In the present case, the defendants have propounded the Will and are required to prove the same. Once the case is fixed for defendants' evidence, the plaintiff cannot be permitted to regulate the manner and mode of proof. This Court has carefully read the judgment passed in **Janki Narayan Bhoir's case (supra)**. In the aforesaid judgment, the Supreme Court, after examining Section 68 and 71 of the Indian Evidence Act, 1872, held that if only one attesting witness, who is examined, fails to prove the execution and attestation of the Will in accordance with Section 63 of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872, then, the propounder shall be deemed to have failed to prove the Will. In the aforesaid judgment, the Supreme Court does not lay down that the defendant is bound to examine the second attesting witness.

Hence, dismissed.

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

26.07.2022

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE