

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 400 of 2012 (O&M)

Date of Decision: 08.07.2022

Manjit Singh
... Appellant(s)

Versus

Kuldeep Singh and Another
... Respondent(s)

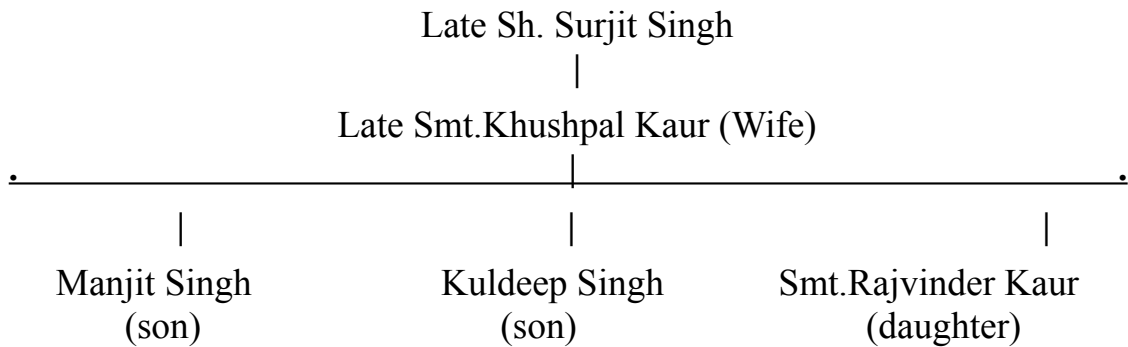
CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Sanjiv Gupta, Advocate
for the appellant(s).

Mr. Aakash Singla, Advocate
for the respondents.

Anil Kshetarpal, J.

1. Though notice in the appeal was issued only to explore the possibility of settlement between the parties which, despite the best efforts, could not be arrived at, this Court has heard the arguments of learned counsel representing the parties.
2. In order to understand the *inter-se* relationship between the parties, it would be appropriate to draw a small pedigree table, which is as under:-



3. The dispute is with regard to the estate of late Smt. Khushpal Kaur. The respondent No.1-Kuldeep Singh claims that late Smt. Khushpal Kaur had executed a registered Will bequeathing her property in the favour of the respondent and his brother, namely Sh.Manjit Singh, whereas the appellant-Sh.Manjit Singh claims that late Smt. Khushpal Kaur had executed a Will dated 28.05.1999 exclusively in his favour. Both the Courts below have found that Manjit Singh has failed to prove the execution of the Will dated 28.05.1999 as he did not examine in the evidence any attesting witness, which is mandatory in view of Section 68 of the Indian Evidence Act, 1872 (hereinafter referred to as “the 1872 Act”). The learned counsel representing the appellant contends that one of the attesting witness’s son, namely Sh.Pankaj Sharma was examined. He identified the signatures of his father, namely late Sh. Ram Sarup.

4. It is evident that the plaintiff wants to prove the Will in accordance with Section 69 of the 1872 Act which provides for fulfillment of two conditions. Section 69 of the 1872 Act is extracted as under:-

“69. Proof where no attesting witness found.— If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the hand writing of that person”.

5. On a careful reading of Section 69 of the 1872 Act, it is evident that the propounder of the Will is required to prove that the attestation by one attesting witness, at least, is in his handwriting and also prove that the

signatures of the executant is in his handwriting, however, in the present case, the signatures of the executant, in his handwriting, have not been proved. Thus, the appellant has failed to fulfill the aforesaid mandatory conditions. In fact, it is a case where Section 69 of the 1872 Act is not applicable because one of the attesting witness, namely Kamaljit is still alive and available.

6. In view of the aforesaid facts, no ground is made out to interfere. Hence, the present appeal is dismissed. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

July 08, 2022
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No