

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

RSA-4534-2017 (O&M)

Date of decision: 30.09.2022

Jangir Kaur through LRs

....Appellants

Versus

Darshan Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Dinesh Maurya, Advocate for the appellants

ANIL KSHETARPAL, J (Oral)

1. The Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh are governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in **Pankajakshi (Dead) through LRs vs. Chandrika and others, (2016) 6 SCC 157.**

2. While assailing the concurrent findings of fact arrived at by the courts below, the plaintiff through her legal representatives has filed the present appeal. The dispute is with respect to inheritance of the property left behind by late Sh.Gurdial Singh. He died issueless though he was married. It has come on record that Sh.Gurdial Singh, during his lifetime transferred 2/3rd share out of the land measuring 11 kanals and 18 marlas in favour of his wife Smt. Nasib Kaur and accordingly, he was left only with 1/3rd share in the property at the time of his death. The plaintiff is the sister of late Sh.Gurdial Singh. She claims a share in the property on the basis of natural succession. On the other hand, defendant no.1 (Sh.Darshan Singh), while contesting the suit, has

propounded a registered Will allegedly executed by late Sh.Gurdial Singh on 17.04.2006 in his favour. In order to prove the Will, the defendant examined both the attesting witnesses namely Karnail Singh, Panch and Surjit Singh, Nambardar. Both the witnesses have proved the Will in accordance with Section 68 of the Indian Evidence Act, 1872. The scribe namely Sh.Yashpal Sharma, has also been examined. Sh. Gurdev Singh, brother of late Sh.Gurdial Singh appeared in evidence and supported the case of the defendant. Thus, both the courts have dismissed the plaintiff's suit.

3. Heard the learned counsel representing the appellants at length and with his able assistance perused the judgments passed by both the courts below. At the outset, it may be noted that the learned counsel representing the appellants has produced a photocopy of the alleged registered Will dated 17.04.2006. It has been scribed in Gurmukhi (Punjabi), which is a local dialect in the State of Punjab. The thumb mark of the testator exists after the written part in the Will comes to an end. He had appeared before the Registrar at the time of registration of the Will. His photograph alongwith the witnesses and the Sub Registrar is available on the photocopy of the Will.

4. Learned counsel representing the appellants contends that late Sh.Gurdial Singh was married, however, in the Will it was stated that he is unmarried. He submits that this ground itself is sufficient to discard the registered Will. Both the courts have examined the aforesaid argument in detail. It has been noticed that since late Sh.Gurdial Singh

was issueless, therefore, probably in the first sentence of the Will, he omitted to specify that he was married. However, one small factual error which does not affect the validity of a registered Will, will not be sufficient to discard the registered Will, particularly when the brother of the testator has appeared in evidence and supported the case of the defendant. Both the attesting witnesses of the Will have successfully withstood the searching questions put by the learned counsel representing the plaintiff during cross-examination. The attention of the Court has not been drawn to any part of their deposition, which may lead the court to doubt the correctness of their testimony.

5. The scope of interference in Regular Second Appeal is limited. Hence, no ground to interfere is made out.

6. Dismissed.

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

30.09.2022

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE