

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

R.S.A.No.559 of 2019(O&M)

Date of Order: 01.04.2022

Balbir Singh (since deceased) through LRs Chotti and others.

..Appellants

Versus

Sanjay and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Tarunveer Vashist, Advocate,
for the appellant.

Mr. Harkesh Manuja, Advocate
for respondent no.1 and 2.

ANIL KSHETARPAL, J(Oral)

While assailing the judgment and decree passed by the First Appellate Court, the plaintiff has filed the present appeal. The plaintiff filed a suit for grant of decree of declaration that he is joint owner in possession of the property left by his mother late Smt. Chameli Devi and the Will set up by defendant no.1 and 2 is forged and fabricated. Defendant no.1 and 2 are grand children of late Smt. Chameli Devi. In other words, the dispute is with regard to succession of the property left behind by late Smt. Chameli Devi between her son and grand sons. Late Smt. Chameli Devi had two sons-Balbir Singh and Pale Ram and two daughters-Kamla and Birmati. Defendant no.1 and 2 are the sons of defendant no.3-Pale Ram.

The defendants contested the suit and produced the registered Will dated 05.10.2007 executed by late Smt. Chameli Devi. The aforesaid testament is Ex.P1 on the file.

The learned trial court decreed the suit while observing that the

Will suffers from suspicious circumstances. However, the learned First Appellate Court reversed the judgment of the trial Court after re-appreciating the evidence. That is how the plaintiff has filed the present appeal.

This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

The learned counsel representing the appellant contends that Sh. Tara son of Mange Ram is the only attesting witness examined by the defendants. He contends that Tara has failed to prove that the Will was signed by second witness, namely, late Sh. Ishwar Singh, Lambardar either in his presence or in the presence of the testator.

Per contra, the learned counsel representing the defendants while drawing the attention of the Court to the deposition of Sh. Tara contends that the testator as well as both the witnesses were present at the place where the Will was executed at the same time and the learned counsel representing the plaintiff failed to solicit explanation from Sh. Tara as to whether the other attesting witness, namely, Sh. Ishwar Singh had signed the Will at the time of execution in his presence or in the presence of late Smt. Chameli Devi, the testator.

In substance, the learned counsel representing the appellant contends that Tara has failed to prove the attestation of the Will by Sh. Ishwar Singh and therefore, there is non compliance of Section 68 of the Indian Evidence Act.

At this stage, it becomes important to extract paragraph 1 of the affidavit submitted by Tara, in lieu of examination-in-chief, which reads as under:-

“1. That on 05.10.2007 Smt. Chameli W/o Ramdia R/o Villa. Nagar Tehsil Gohana executed a will in favour of Sanjay and Parveen sons of Pale Ram regarding her moveable and immovable property and the said will was executed at the instance of Smt. Chameli at her free will and without any pressure and after its execution, the contents of the same was read over and explained to her by the petition writer in simple Hindi and after admitting and understanding the same to be correct, said Chameli put her thumb impression over the same in the presence of the deponent and other witnesses and the deponent also signed the same and further the said will was registered from the S.R.Gohana on the same day and after admitting and understanding the contents of the same to be correct. Smt. Chameli also put her signature on the same before S.R. Gohana and the same is also duly signed by the deponent and other witness. The deponent has seen the certified copy of will which bears my signature.”

Despite repeated request, the learned counsel representing the appellant failed to draw the attention of the Court to any searching question suggested by the learned counsel representing the appellant to Tara on this aspect of the matter. It was the duty of the learned counsel representing the plaintiff to establish that Tara failed to prove the Will in accordance with Section 68 of the Indian Evidence Act. For that purpose, it was incumbent upon the counsel to draw the attention of Tara in this regard and solicit his answer.

Moreover, it is not the case of any of the parties in dispute that Tara and Ishwar Singh, both the attesting witnesses were not present at the time when late Smt. Chameli Devi executed the Will. It was for the plaintiff to lay the foundation before objecting to the registered Will. The registered Will bears not only thumb impressions of late Smt. Chameli Devi but also her photographs. The plaintiff does not dispute the correctness of the photographs of the testator. The plaintiff has not led any evidence to prove that late Smt. Chameli Devi did not affix her thumb impressions on

each page of the registered Will at the time of execution and also thumb marked on the Will at the time of its registration.

Keeping in view the aforesaid facts, no ground to interfere is made out.

Dismissed.

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

April 01, 2022
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No