

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

RSA-1933-2018 (O&M)

Date of Decision: August 18, 2023

MUKHTIAR SINGH

..... Appellant

Versus

MALKIAT SINGH & ORS

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Surinder Garg, Advocate for the appellant.

HARKESH MANUJA, J. (ORAL)

1. By way of present appeal, challenge has been laid to judgments and decrees dated 30.11.2016 and 24.10.2017 passed by the Courts below whereby a suit filed at the instance of respondent No.1-plaintiff seeking declaration claiming 1/5th share out of the estate of Jangir Kaur, widow of Bhag Singh has been decreed.
2. Briefly stating, the respondent No.1-plaintiff being one of the legal heirs of deceased Jangir Kaur, based on natural succession claimed 1/5th share out of the estate left by her, questioning the validity of Will dated 19.02.2010 executed by her in favour of respondents No.1 and 2.
3. The trial Court vide judgment and decree dated 30.11.2016 decreed the suit filed by respondent No.1-plaintiff, holding that the execution of Will dated 19.02.2010 was never proved on record in accordance with law. Aggrieved thereof, the present appellant-defendant No.1 challenged the judgment and decree passed by trial Court by way of First Appeal, the same also came to be dismissed vide judgment and decree dated 24.10.2017 passed by the First Appellate

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Court.

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4. Impugning the aforementioned judgments and decrees, learned counsel for the appellant submits that out of two attesting witnesses namely Harbans Singh, Lambardar and Mukhtiar Singh, Member Panchayat, Harbans Singh could not be examined on account of his death, however, Mukhtiar Singh, Member Panchayat was won over by respondent No.1-plaintiff and that is why the attestation was sought to be proved through the scribe i.e. DW1-Jaipal Sharma, Advocate to discharge the burden. He also submits that an application seeking additional evidence in the shape of summoning and examining of Sub-Registrar Mr. Atam Singh was also filed, however, the same was wrongly declined.

5. I have heard learned counsel for the appellant and gone through the paper-book. I am unable to find substance in the submissions made by learned counsel for the appellant.

6. In the present case, suit for declaration claiming 1/5th share out of estate of deceased-Jangir Kaur was filed by respondent No.1-plaintiff being one of her son, on the basis of natural succession. The relationship between the parties viz-a-viz Jangir Kaur was never disputed by the appellant. On the other hand, the estate left by deceased-Jangir Kaur was claimed on the basis of Will dated 19.02.2010 which was never proved in accordance with law. Section 63 of the Indian Succession Act, 1925 read with Section 68 of Indian Evidence Act, 1872 enjoins the beneficiary of the Will to establish its valid execution by proving attestation by two attesting witnesses which could no doubt be proved by producing one attesting witness alone.

Further, in case of death of the attesting witness being not found, the attestation of the said Will can be established by proving his handwriting besides the signatures of the executant on the document. In the present case, though an effort has been made on behalf of appellant-defendant No.1 to prove attestation of the Will through the scribe, however, it does not in any manner fulfill the requirement of Section 68 of 69 of the Indian Evidence Act, 1872.

7. Moreover, in case of alleged death of one of the attesting witness namely Harbans Singh, Lambardar, his handwriting could have been easily proved on record through any person conversant with the same. Furthermore, it has also not been established on record that Mukhtiar Singh, Member Panchayat, i.e. the other attesting witness was won over by respondent No.1-plaintiff. In the aforementioned facts and circumstances, when the valid attestation of Will in question was never established either in consonance with Section 68 or 69 of the Indian Evidence Act, 1872, the valid execution of the Will in question was never proved on record as per the requirements of Section 63 of the Indian Succession Act, 1925 resultantly the estate left by deceased Jangir Kaur devolved upon all her legal heirs as per natural succession.

8. In view of the discussions made hereinabove, finding no illegality or perversity in the judgments passed by Courts below, the present appeal is dismissed.

18.08.2023
tejwinder

(HARKESH MANUJA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>

