

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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2024:PHHC:031276

RSA-773-1991
Date of decision: 05.03.2024

ROORI KAUR ..Appellant

Versus

GURDEV KAUR AND OTHERS ..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Deepak Kaushal, Advocate
for the appellant.

Mr. P.S. Jammu, Advocate
for respondents.

ANIL KSHETARPAL, J(Oral)

1. In this regular second appeal, the defendant assails the correctness of the findings of fact arrived at by the First Appellate Court. Though, the trial Court dismissed the plaintiffs suit, however, the First Appellate Court has reversed the same. The dispute in the present case is with regard to the succession to the property left behind by Sh. Hazura Singh. The plaintiffs are widow, daughters and a son of late Sh. Hazura Singh from second wife. The defendant (appellant herein) is the daughter from the first wife of Sh. Hazura Singh. Smt. Roori Kaur, the defendant claims that Sh. Hazura Singh executed a registered Will dated 08.08.1984, bequeathing the entire property in her favour. The Will was registered post the death of late Sh. Hazura Singh.

2. The trial Court dismissed the suit on the ground that the plaintiffs have failed to prove that Sh. Hazura Singh did not execute the Will. The First Appellate Court found that no attesting witness of the Will has been examined by the propounder i.e. Smt. Roori Kaur. The scribe of the Will did not come forward to complete his testimony. Thus, the First

Appellate Court has held that Smt. Roori Kaur-defendant being the propounder has failed to discharge her burden of proving the Will.

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

4. The learned counsel representing the appellant contends that the execution of the Will has been admitted by the plaintiffs and therefore, the defendant was not required to prove the same.

5. This Court has carefully read the copy of the plaint filed by the plaintiffs. In para 5 of the plaint, the plaintiffs have alleged that the defendant has procured a forged Will dated 08.08.1984. In para 6 of the plaint, the plaintiffs have alleged that the impugned Will is liable to be ignored on various grounds. Hence, the plaintiffs do not admit the execution of the Will. As per Section 68 of the Indian Evidence Act, 1872, the Will is required to be proved by examining at least one attesting witness. The appellant has failed to examine the one witness.

6. Hence, no ground to interfere with the findings of fact arrived at by the First Appellate Court, is made out

7. Dismissed accordingly.

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

March 05th, 2024

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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*