

2024:PHHC:017795
**122 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA-216-2019 (O&M)
Date of decision: 08.02.2024

Arjun Dev

....Appellant

Versus

Naresh Kumar and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.Puneet Kakkar, Advocate for the appellant

ANIL KSHETARPAL, J (Oral)

1. In this Regular Second Appeal, the correctness of the concurrent finding of facts arrived at by the courts below is challenged by the defendants. The plaintiff's suit for the grant of decree of declaration that the proforma defendants and the plaintiff are owners in possession of the suit land, on the basis of a registered Will, executed by their father, has been decreed. It has been found that both the attesting witnesses of the Will have died and signatures of one of the attesting witness was proved by examining his Clerk as late Sh.Shiv Kumar Bhola, the attesting witness was a practising lawyer. Apart from this, hand-writing and finger print expert has been examined to prove the signatures of late Sh. Devi Dayal on the registered Will dated 06.09.1982.

2. As per Section 69 of the Indian Evidence Act, 1872, if no such attesting witness can be found, then the propounder of the Will is required to prove that the attestation of one attesting witness atleast in his handwriting and that signatures of person, executing the document is

in the handwriting of the testator. In this case, PW5 Sh.Gopi Ram worked with late Sh.Shiv Kumar Bhola has testified that he identifies the signatures of late Sh.Shiv Kumar Bhola. The signatures of the testator has been proved by examining the handwriting and finger-print expert. The findings of fact arrived at by the courts below are based upon appreciation of evidence. Unless and until, it is found by the court, while entertaining second appeal, that there is a substantive error in appreciation of evidence or the impugned judgments suffers from procedural error, the court is not expected to interfere.

2. Though, the learned counsel representing the appellant made sincere attempt, however, failed to draw the attention of the Court to any material error in the impugned judgment.
3. Keeping in view the aforesaid facts, no ground to interfere is made out.
4. Hence, dismissed.
5. All the pending miscellaneous applications, if any, are also disposed of.

08.02.2024
rekha

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No