



In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 207 of 2025 (O&M)

Date of Decision: 24.01.2025

Sumesh

... Appellant(s)

Versus

Ved Parkash and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Tarun Hans, Advocate
for the appellant(s).

Anil Kshetarpal, J.

1. The Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh is 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 v. Chandrika and Others (2016) 6 SCC 157*.

2. This is defendant's appeal against the judgment of the First Appellate Court, which, in turn, has reversed the Trial Court's judgment.

3. The inheritance of property left behind by late Smt. Savitri is in dispute. The plaintiff claims that late Smt. Savitri bequeathed the suit property equally in favour of the parties to the litigation, whereas the defendant No.1 claims that the property came to his share in a family settlement during the life time of late Smt. Savitri.

4. In order to prove the execution of the registered Will dated 14.12.2009, the plaintiff examined the attesting witness, namely Hari Singh Yadav who appeared as PW.5. He also summoned the original record from the office of the Registrar to prove the documents. The Trial Court held that the Will is not proved, however, the First Appellate Court, upon re-appreciation of evidence, found that the execution of the Will has been proved in accordance with the provisions of Section 68 of the Indian Evidence Act, 1872 (hereinafter referred to as “the 1872 Act”) because PW.5 Hari Singh Yadav has deposed that the Will was executed by late Smt.Savitri in his presence.

5. The learned counsel representing the appellant, while referring to certain portions of cross-examination of the witness, submits that the execution of the Will has not been proved in accordance with the provisions of Section 68 of the 1872 Act as the witness has failed to state that the executant signed in his presence. The learned counsel has produced a copy of deposition of PW.5 Hari Singh Yadav. In the examination-in-chief, PW.5 Hari Singh Yadav states that late Smt. Savitri executed the Will in his presence. In other words, it means that late Smt. Savitri signed the Will in the presence of PW.5 Hari Singh Yadav. In cross-examination, he also states that the Will was also typed in his presence, though he could not remember the name of the typist. He further stated that late Smt. Savitri had appended her thumb impression and signatures in his presence.

6. Keeping in view the aforesaid facts, no ground is made out to interfere with the impugned judgment. Hence, the present appeal is dismissed.

7. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

January 24, 2025
“DK”

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