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C.A.No. 1539 OF 1998
ITEM NO. 119

COURT NO.7

SECTION

SUPREME COURT OF INDIA

RECORD OF PROCEEDINGS

Civil Appeal No.1539 of 1998

Rajinder Singh

Appellant (s)

Versus

Das Chand & Ors.

Respondent (s)

(with Office Report)

Dated:24-07-2003: This appeal was called on for hearing today.

CORAM

HON'BLE MR. JUSTICE Y.K. SABHARWAL
HON'BLE MR. JUSTICE B.N. AGRAWAL

For Appellant (s)Mr.PK. Mullick, Adv.

For Respondent (s)Mr. MR. Bidsar, Adv. (NP)

UPON hearing counsel, the Court made the following

O R D E R

After hearing learned counsel for about 15 minutes, the Court allowed the appeal. No costs.

(S. Thapar) (V.P. Tyagi)
PS to Registrar Court Master

The signed order is placed on the file.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1539 OF 1998

Rajinder Singh

Appellant (s)

Versus

Dal Chand & Ors.

Respondent (s)

O R D E R

By the impugned judgment the High Court has dismissed Regular Second Appeal No.2203 of 1997 observing that both the Courts below have concurrently found that the registered Will dated 23rd march, 1978 was executed by Smt. Surjiya in favour of Respondent No.1 and is a valid one. In the opinion of the High Court, no case was made out for interference in Regular Second Appeal which, it appears, was dismissed in limine. The appellant had set up a subsequent Will dated 8th August, 1982 having been executed by Surjiya which purported to cancel the Will dated 23rd March, 1978. The only reason given by the First Appellate Court in upholding the finding that the Will dated 8th August, 1982 was not valid, was that this second Will was not registered and the testator knew the advantage of getting a Will registered and no reason had been given for non-registration of the second Will. The First Appellate Court said that this fact by itself is

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sufficient to cause a dent in the genuineness of the subsequent Will and the subsequent Will cannot be said to have been pressed in absence of reasons of non-registration thereof. This approach, prima facie, itself shows the existence of a substantial question of law requiring the consideration of the High Court. We would accordingly set aside the impugned judgment and remand Regular Second Appeal No.2203 of 1997 for fresh decision of the High Court in accordance with Section 100 Code of Civil Procedure by formulating the substantial question of law. The appeal is allowed in the above terms. No costs.

.....J
(Y.K. Sabharwal)

.....J
(B.N. Agrawal)
New Delhi,
July 24, 2003