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**(2013) 03 UK CK 0028**

**In the Uttarakhand High Court**

**Case No : Special Appeal No. 18 of 2013**

Smt. Snehlata Bhandari and Another

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

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**Date of Decision :** 12-03-2013

**Acts Referred:**

**Citation :** AIR 2013 Utt 94

**Hon'ble Judges :** Barin Ghosh, C.J;Alok Singh, J

**Bench :** Division Bench

**Advocate :** Sudhir Kumar, for the Appellant; Vinay Kumar, Standing Counsel, A.S. Rawat, Senior Advocate assisted by Raveendra Singh Bisht, for the Respondent

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## **Judgement**

Barin Ghosh, C.J.—In the instant case, appellant No. 1 is the widow of Pradeep Singh Bhandari and appellant No. 2 is the son of Pradeep Singh Bhandari. Pradeep Singh Bhandari was the son of G.S. Bhandari. G.S. Bhandari predeceased his wife Smt. Durga Devi Bhandari. After the death of Smt. Durga Devi Bhandari, respondent No. 3, the daughter of G.S. Bhandari, purported to present a Will, allegedly executed by Smt. Durga Devi Bhandari, for registration before respondent No. 2, Sub-Registrar (Second), Haldwani. Respondent No. 2 has registered the said Will. Challenging the said registration, a writ petition was filed. In that, amongst others, it was contended that, in terms of the provisions of Section 169 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, the subject Will was required to be registered by the Testator herself, inasmuch as, the Will dealt with Bhumidhari right of the Testator. The learned Judge, who dealt with the writ petition, did not consider the said contention on the part of the appellant. We feel that the question, whether, by the Will, Bhumidhari right has been transferred or not, has not yet cropped up. The same Will crop up only when, on the strength of the Will, the alleged beneficiary thereunder will seek a direction for transfer of the Bhumidhari right of the Testator in her favour. We have not gone into the question at this stage, whether, by reason of Section 169 of the Uttar Pradesh Zamindari Abolition and Land

Reforms Act, 1950, read with Section 17(1)(f) of the Registration Act, 1908, it was a requirement for the Testator herself to register the Will or not, inasmuch as, by and under the purported Will, the Testator purportedly devised also those properties, which cannot be called Bhumidhari rights. Inasmuch as the Will cannot be truncated into two or scissored, one in respect of the Bhumidhari rights and the other in respect of the other rights, we have only proceeded to find out, whether the Registrar, in the matter of registering the Will in question, acted in excess of his authority.

2. Learned counsel for the appellants submitted that, in terms of Section 2(h) of the Indian Succession Act, 1925, "Will" means the legal declaration of the intention of the testator with respect to his property, which he desires to be carried into effect after his death. Learned counsel, further, submitted that, in terms of Section 63 of this Act, it is incumbent to have at least two attesting witnesses to make the Will a legal declaration of the intention of the testator. It was submitted that, in the instant case, the Will had only one attesting witness, inasmuch as, on the query of the Sub-Registrar, one of the alleged attesting witnesses stated that he did not attest the Will. It was contended that, in those circumstances, the Registrar did not discharge his obligation of satisfying that the Will was executed by the testator. In other words, the contention was that, since the purported Will was attested by only one witness, the same was not a Will and, accordingly, the Registrar could not satisfy that the same was the Will of the Testator and, accordingly, could not register the same.

3. We think that, under Clause (a) of sub-section (2) of Section 41 of the Registration Act, 1908, the Registrar had the obligation of satisfying that the Will, or the instrument purporting to be Will, was executed by the testator. If the Registrar was satisfied about the execution of the purported Will by the testator, he certainly could register the Will. However, we make it absolutely clear that satisfaction of the Registrar that the Will was executed by the testator is no certificate that the same was executed in fact by the testator. At the same time, registration of a Will does not give more authenticity to the Will. An unregistered Will or a registered Will has no difference. A Will will come into force only when the same is accepted by a competent court to be a Will executed by the testator, who is supposed to have executed the same. This opinion of the court may be had by applying for probate or letters of administration annexed with the Will or in any other collateral proceedings.

4. We, accordingly, refuse to interfere with the judgment and order under appeal, but, at the same time, make it absolutely clear that we have not gone into the question, whether, in order to transfer Bhumidhari rights under a Will, it is obligatory on the part of the testator to have the Will registered himself/herself, as was urged before us and, accordingly, the said question is left open to be decided at the appropriate time when a claim for transfer of the Bhumidhari rights, under the Will, will be raised. It goes without saying, as would be evident from what we have stated above, that we have not proceeded on the basis that

the purported Will, registered by respondent No. 2 in the instant case being the subject matter of this appeal, was in fact executed by Late Smt. Durga Devi Bhandari. The appeal, accordingly, stands disposed of.