

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 2821 of 2008(O&M)
Date of decision : December 2, 2015

Hari Parkash and another

..... Appellants

Versus

Smt. Gulkandi (deceased) through L.Rs and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Surender saini, Advocate
for the appellants.

Mr. R. S. Malik, Advocate
for the respondents.

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

Amit Rawal, J (oral).

The appellants-plaintiffs are in Regular Second Appeal against the concurrent finding of fact whereby the suit for declaration and permanent injunction has been dismissed by both the courts below on merits as well as on the ground of Order 2 Rule 2 and Section 11 (Explanation IV) CPC.

Learned counsel appearing on behalf of the appellants-plaintiffs submits that the property at the hands of Jamna Dass was ancestral thus the plaintiffs had a right in the property by

birth. He further submits that Kirpa Devi was daughter of Data Ram, therefore, had a right in the property left by Bishamber Dayal who died issueless. The Will, executed in favour of defendant is none else but brother-in-law of Bishamber Dayal, was surrounded by suspicious circumstances. Thus, both the courts below have committed illegality and perversity in dismissing the suit, much less substantial question of law arise for determination by this Court.

Mr. R. S. Malik, learned counsel appearing on behalf of the respondents-defendants submits that plaintiffs have miserably failed to prove to be owners of the suit property and whether Kirpa Devi was daughter of Datta Ram or not. In the absence of same, they could not stake the claim in the estate of Data Ram, much less challenge the Will of Bishamber Dayal.

I have heard learned counsel for the parties and appraised the paper book.

Section 50 of the Indian Evidence Act, 1872 prescribes procedure to prove the factum of relationship. The appellants-plaintiffs have miserably failed to prove that Kirpa Devi was daughter of Data Ram, whereas, it has been found that she was daughter of Munshi Ram and as per the pedigree table set up by the plaintiffs Munshi Ram does not figure therein. Once Kirpa Devi had not been found or proved to be daughter of Data Ram, she could not claim the estate of Bishamber Dayal who was brother of Data Ram.

I do not intend to differ with the finding rendered by both the courts below which is based on appreciation of oral and documentary evidence. I do not find any illegality or perversity in the

aforementioned judgment and decree of the appellate court.

No substantial question of law arise for determination by this Court.

In view of what has been observed above, the appeal is devoid of merits, accordingly, the same is dismissed.

(AMIT RAWAL)
JUDGE

December 2, 2015
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