

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

RSA No.152 of 2012 (O&M)

Date of decision : 29.10.2015

Sunil

...Appellant

Versus

Nirmal Devi and ors.

...Respondents

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.**

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

Present: None for the appellant.

Mr. Binderjit Singh, Advocate for respondents.

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**AMIT RAWAL, J. (Oral)**

The appellant-defendant is in Regular Second Appeal against the concurrent findings of fact, whereby suit for declaration and joint possession declaring the plaintiff to be owner to the extent of 1/7<sup>th</sup> share in the suit property, has been decreed.

The case of the appellant-defendant is that Onkar Singh during his lifetime executed the Will dated 20.10.1992 Ex.D1 and, therefore, respondents-plaintiffs did not have any right, title or share in the estate of Onkar Singh. The onus to prove the execution of the Will was on the appellant-defendant. The original Will has not seen the light of the day.

Onkar Singh died living behind plaintifffs as his daughters and defendant Nos.1 and 2 as his sons. His son Vijay Singh had already expired. The defendant Nos.3 to 8 are his legal representatives. On the basis of the Will, the respondents-plaintiffs illegally got the mutation effected in their favour and thus both the Courts below have committed illegality and perversity in not believing the Will as the photocopy of the Will was duly registered in the office of Registrar and thus substantial question of law arises for determination.

Mr. Binderjit Singh, learned counsel appearing on behalf of respondents-plaintiffs submits, that original Will dated 20.10.1992 Ex.D1 has not seen the light of the day. Only the photocopy of the same got registered having produced on record without there being any request or application for leading secondary evidence. The trial Court rightly rejected the aforementioned Will declaring the daughters and sons having equal share in respect of estate of Onkar Singh.

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

It is a matter of record that Will dated 20.10.1992 has not been produced, much less, proved. Photocopy of Will during the pendency of the suit cannot be taken into evidence in the absence of any prayer or application for leading secondary evidence. The Trial Court rightly decreed the suit by holding that mutation in respect of estate of Onkar Singh in favour of sons on the basis of the photocopy of the Will was erroneous, much less, perverse. In the absence of the Will, all the children of the Onkar Singh including the widow would have equal share & succeed to the interest

and estate of Onkar Singh in equal share.

I do not find any illegality and perversity in the judgment and decree passed by both the Courts below, which have been rendered by appreciating oral and documentary evidence, much less, no substantial question of law arises for determination.

Accordingly, the appeal is dismissed.

**29.10.2015**

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**(AMIT RAWAL)  
JUDGE**