

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

RSA No.5376 of 2012 (O&M)

Date of Decision: 18.03.2015

Kanta Rani

...Appellant

Versus

Kaushalya Devi & ors.

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Peeush Gagneja, Advocate,
for the appellant.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

C.M. No.15054-C of 2012

For the reasons stated in the application, the same is allowed.

Delay of 158 days in refiling the appeal is condoned.

RSA NO.5376 of 2012 (O&M)

This is defendant's appeal against the judgment and decree of learned Additional District Judge, Ferozepur, dated 7th January 2012 modifying the decree passed by the trial Judge on quantification of respective shares by holding in the modifying order that the plaintiffs are entitled to 183/4000 share in the suit property which works out to 36.60 sq. yards or 183 ft. in the suit property, and not restricted to 22.1 sq. yards as per trial court decree which the appellant insists deserve to be reduced for the reason that the successors-in-interest of the disputed property were a total of nine including six sons, two daughters and their mother. The suit for separate possession was brought by the plaintiff/respondents by the

widowed mother and four sons. The appellant, as defendant, had questioned the validity of the testamentary Will executed by his father Hari Chand, husband of Kaushalya Devi-respondent No.1, excluding the appellant and another brother from natural succession in the year 1982 which Will was registered and duly recorded in the revenue record pertaining to the suit corpus. Neither the Will nor the corresponding revenue entry in the record of rights has undergone any challenge by any of the parties to the *lis*. When the appellant is one of those siblings, who stand excluded from the testamentary dispensation of suit property, then she lost her rights, if any, to the corpus and would have no locus standi to urge that she has a subsisting share in the property willed and the Will duly registered in public office. It is also not disputed by the appellant that the property was self-acquired by the testator and therefore, she has no right of natural succession to the corpus property according to her share if there was no Will. The modification of the decree at the hands of the Lower Appellate Court is found appropriate and handed down in proper exercise of jurisdiction and based on appreciation of the documentary evidence on record. It is not an argument of the appellant worthy of acceptance that no oral evidence to prove the Will was adduced by the plaintiffs. There was no such legal necessity in view of the clear mandate of the documentary evidence produced on record by proper mode of proof. An issue was not framed or claimed by the defendant to test the veracity of the testamentary Will. The findings of fact recorded are based on shares distribution determined by the testamentary Will executed by the decedent father of the appellant, who

chose to exclude in the Will, the appellant from inheritance. Therefore, no question of law, much less a substantial one, arises for consideration in this appeal and the appeal is, consequently, ordered to be dismissed and sent to the record room.

18.3.2015
monika

(RAJIV NARAIN RAINA)
JUDGE