

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

RSA No. 1505 of 2015 (O&M)

Date of Decision: December 03, 2015

Balwinder Kaur

.... Appellants

vs.

Avtar Singh (deceased) through LR's and others Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. M.S. Dhali, Advocate for the appellants.

1. *Whether Reporters of Local Newspapers 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?*

Kuldip Singh J.(Oral)

CM-4199-C-2015

There is delay of 56 days in filing the present appeal.

For the reasons mentioned in the application, supported by an affidavit, delay of 56 days in filing the present appeal is condoned, subject to all just exceptions.

Application stands disposed of.

RSA-1505-2015

The suit of the plaintiff for declaration, claiming to be co-owner to the extent of 1/4th share in the land measuring 71 kanals, 07 marlas, bearing khata/khatauni No.74/81 bearing khasra Nos.19//12 min (2-12), 13min (3-0), 14/1 (0-8), 14/2 (4-12), 17(8-0), 18(8-0), 24 (8-0), 19/1(7-12), 22/2/1 (3-16), Khewat/Khatauni No.74/82 bearing Khasra Nos.13//22(8-0), 23(8-0), 24(8-0), 19//4 min(2-0), 12/2 min (5-

0), 13 min(5-0), Khewat Khatauni No.74/83 khasra no.19/4 min (6-0), 7(8-0), 14/3(3-0), 15(8-0), 16(8-0), as entered in the Jamabandi for the year 2000-01, situated in the area of village Saidpur Kalan, Tehsil and District Nawanshahr, on the basis of natural succession of her mother Channo @ Chanan Kaur, was dismissed by the learned Addl. Civil Judge (Sr. Divn.), Shaheed Bhagat Singh Nagar, vide judgment and decree dated 15.11.2012. The findings were upheld in appeal by the learned Addl. District Judge, Shaheed Bhagat Singh Nagar, vide judgment and decree dated 24.09.2014.

The controversy between the parties is that the plaintiff claimed natural succession of his mother whereas defendant No.1 set up the case that her mother Channo @ Chanan Kaur had transferred the suit property in his favour, vide transfer deed dated 09.06.2004. The suit before the lower court was contested by defendant No.1 only. Defendant Nos.2 and 3 did not appear and were proceeded against ex parte. Before the lower court, defendant No.1 examined the scribe as well as attesting witness of the transfer deed to prove that his mother Channo @ Chanan Kaur had executed the transfer deed in his favour. Both the courts below have relied upon the said transfer deed and dismissed the suit of the plaintiff.

I have heard learned counsel for the appellant and have also carefully gone through the case file.

Learned counsel for the appellant has argued that the transfer deed was executed only two days before the death of Channo @ Chanan Kaur. It is further argued that on the transfer

deed, stamp duty was not paid and instructions of the Government were not complied with to prepare the pedigree table.

I am of the view that the transfer deed is duly proved. If there is any irregularity in not preparing the pedigree table, the same is merely an irregularity.

Further, plea has been raised that no specific issue has been framed regarding transfer deed.

However, a perusal of judgments of both the courts below shows that the parties were very much aware of the fact that the transfer deed has been set up. The defendant had led the evidence to prove the transfer deed and was cross-examined by the plaintiff. Once the parties are alive to the controversy and has led evidence and the matter has been agitated at the time of arguments, then in such case, if specific issue is not framed, the findings in that regard, cannot be reversed. The findings of facts have been recorded by both the courts below. No substantial question of law arises in the present appeal.

Hence, the present regular second appeal stands dismissed.

December 03, 2015
sarita

(KULDIP SINGH)
JUDGE