

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

RSA No. 3534 of 2015 (O&M)

Date of decision : 29.7.2015

Smt. Bhagwanti Devi (deceased) through LRs and others ... Appellants

versus

Ram Chander and another

... Respondents

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Ravinder Narwal, Advocate, for the appellants.

Rajesh Bindal, J.

The plaintiffs are before this Court against concurrent findings of fact recorded by both the Courts below whereby the suit filed by them for declaration with consequential relief of permanent injunction, was dismissed.

The plaintiffs in the suit are daughters and wards of pre-deceased daughter of Shera, whose property is in dispute. The defendants are sons of Shera. The claim in the suit is that the plaintiffs/appellants are entitled to share in the property, the same being joint Hindu Family property. Shera died on 3.4.1991. Challenge in the suit was also made to judgment and decree of the Court dated 10.3.1989 transferring the entire land in the names of two sons, the defendants, and the mutation sanctioned on the basis thereof. The mutation was sanctioned in the year 1990 before the death of Shera.

Challenge has also been made to Will dated 17.9.1976 executed by Shera. The suit was filed on 6.6.2008. Cause of action to file the suit at a belated stage is stated to be some differences arising out at marriage of ward of appellant no.1. Otherwise, the appellants never raised any issue or claim regarding share in the property, which was mutated in favour of two sons in terms of consent decree passed in their favour on 10.3.1989, which was well within the knowledge of the appellants. Though it was sought to be claimed

that the property was inherited by Shera, hence, could not be bequeathed/ transferred by him in favour of two sons only, however, no evidence was led in support thereof. Meaning thereby, Shera had the right to transfer the property in favour of any one. It has further come on record that the consent decree was passed in favour of defendants against Shera after he appeared in Court and admitted their claim by filing written statement. Though the decree is dated 10.3.1989 and even mutation was also sanctioned in the year 1990 much before the death of Shera, who died on 3.4.1991, he never challenged the same.

Further the learned Court below has observed that the appellants cannot raise any claim on the basis of amendment made in Hindu Succession Act, as Shera had died on 3.4.1991 and the inheritance was open on that day. Any subsequent amendment will not have any affect on the rights of the parties.

The findings recorded by the learned Courts below cannot be said to be perverse. No substantial question of law arises. The appeal is accordingly dismissed. Consequently, the accompanying applications are also dismissed.

29.7.2015

vs

(Rajesh Bindal)
Judge