

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

RSA No.2202 of 2014 (O&M)

Date of decision: 18.12.2015

Gulzar Singh

... Appellant

Vs.

Bhupinder Singh and others

... 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:- Mr. Pankaj Sharma, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

The appellant-plaintiff is in Regular Second Appeal against the concurrent findings of facts and law, whereby, the suit seeking declaration, possession and permanent injunction vis-a-vis land allegedly sold by defendants No.4 to 6 in favour of defendant No.3, has been dismissed.

It is pertinent to mention here that defendants No.4 to 6 are real sisters of appellant-plaintiff. In the aforementioned suit, challenge was laid to the Will dated 30.05.1991 set up by Rachan Singh in favour of appellant-plaintiff, who allegedly died on 25.05.1992. Subsequent mutation was entered into by the revenue Courts vis-a-vis estate of Rachan Singh by way of natural succession, was also questioned.

Mr. Pankaj Sharma, learned counsel for the appellant-plaintiff submits that before the lower Appellate Court, an application under Order 41 Rule 27 CPC was filed, seeking indulgence of the Court to grant permission by way of additional evidence to examine Piara Singh as attesting witness to the Will was moved but the same has erroneously been dismissed. Even otherwise, the Will is registered one and had been proved through the testimony of clerk who identified the signatures, thus, both the Courts below have not noticed the aforementioned facts and committed illegality and perversity, much less, substantial question of law arises for adjudication of the present appeal.

I have heard learned counsel for the appellant-plaintiff and appraised the impugned judgments and decrees of the Courts below.

The principles granting the permission to lead evidence under Order 41 Rule 27 of the Code of Civil Procedure are no longer res integra. The additional evidence means evidence which has arisen or came to the knowledge of the party asserting to produce the same after passing of the judgment and decree. Piara Singh, attesting witness of the Will dated 30.05.1991 was alive at the time when the suit was filed. No effort has been made by the appellant to examine him. Perhaps he would not have toed to his line and thus, not examined. However, during the pendency of the suit, it appears that some arrangements have been made, therefore, the application

was filed to produce him by way of additional evidence, thus, prayer in application cannot be said to have fallen within the expression “despite exercise of due diligence” that he could not produce the attesting witness. Even otherwise defendant No.3 is none else but mother of appellant and his sisters have transferred their share in favour of defendant No.3-mother.

In view of the aforementioned observations, I do not intend to differ with the findings rendered by both the Courts below, based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination of this Court.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

December 18, 2015

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