

In the High Court of Punjab and Haryana at Chandigarh

RSA No.5361 of 2014

Date of decision: October 01, 2015

Mangal Singh and others

..... Appellants

Versus

Jarnail Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. B.S. Jaswal, 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)

Challenged in the present Regular Second Appeal is the judgment and decree dated 31.03.2014 passed by the learned Additional District Judge, Amritsar reversing the judgment and decree dated 15.10.2012 passed by the learned Additional Civil Judge (Sr. Divn.), Baba Bakala, District Amritsar vide which suit filed by the present appellants was

dismissed. The impugned judgment was set aside and declaration was passed to the effect that plaintiffs No.1 and 2 are owners in joint possession to the extent of 1/5th share each. Plaintiffs No.3 and 4 are joint owners to the extent of 1/5th share and defendants No.1 and 2 are owners to the extent of 1/5th share each in the suit land. They were also restrained from alienating more than their share out of suit land and from dis-possessing each other from the joint possession and from dis-possessing. The appeal was accordingly disposed of.

Facts of the case show that according to the plaintiffs their brother Surinder Singh is dead. They were five brothers and had 1/5th share each on the basis of registered Will executed by their father Chanan Singh on 22.12.1980. Surinder Singh died unmarried and issueless and, however, his death mutation was sanctioned in favour of defendants No.1 and 2, who are put to be brother and mother of Surinder Singh. The plea of the plaintiffs is that defendant No.2 Banti is not widow of Chanan Singh which means that the plaintiffs claimed that Banti is not their mother and, therefore, she could not succeed Surinder Singh, who died unmarried and issueless. If the plaintiffs claimed that Banti is not the mother of Surinder Singh, the best evidence was to produce the birth certificate to show that Banti is not mother of deceased Surinder Singh but no such evidence was

produced. Non-appearance of Banti in defence is not a ground to hold that claim of the plaintiffs has been proved. It was for the plaintiffs to prove their claim. There is no illegality and perversity in the impugned judgment passed. The findings of fact have been recorded. No substantial questions of law arises. Hence, the present appeal stands dismissed.

(KULDIP SINGH)
JUDGE

October 01, 2015

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