

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

**Regular Second Appeal No.6421 of 2014 (O&M)**

Date of decision:14.09.2015

Arvinder Pal Singh and another

... Appellants

versus

Malwinder Kaur and others

## .... Respondents

**CORAM: HON'BLE MR. JUSTICE K. KANNAN**

— — — — —

Present: Mr.Nakul Sharma, Advocate,  
for the appellants.

\_\_\_\_\_

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ?No.

— — —

**K.Kannan, J. (Oral)**

**CM No.15331-C of 2014**

For the reasons stated in the application, delay of 19 days in filing the appeal is condoned.

Application stands disposed of.

**CM No.15328-C of 2014**

Exemption granted, as sought for. Annexures A1 to A12 are taken on record.

Application stands disposed of.

**Regular Second Appeal No.6421 of 2014 (O&M)**

1. The suit was brought at the instance of the plaintiffs who

are the daughters claiming a joint right to 2/6<sup>th</sup> share as heirs to their father Amar Singh along with the 3 sons who were the defendants and their mother. The grandchildren were also parties. The property was situate in cantonment area and the defence was that Amar Singh himself was not the owner of the property but had merely right of enjoyment of the same. However, on death of Amar Singh in the year 1987, the widow of Amar Singh alone had been mutated as a heir and the plaintiffs, therefore, cannot claim any right. The trial Court held that the property had been purchased in the name of Amar Singh in the year 1969 and whatever right Amar Singh had, the plaintiffs would inherit as heir at law equally with the sons and the widow, as per Section 8 of the Hindu Succession Act. The mutation of inheritance would not govern the civil right of parties and it could not afford to the defendants a right to plead exclusion of the plaintiffs' right. The plaintiffs had also sought for injunction by attempting to show that one of them was residing at the house jointly with others and the court held that the joint possession must be protected.

2. After the decree was passed, the defendants in appeal had attempted to introduce a new case that Amar Singh had executed a Will on 18.02.1984 and the mutation of inheritance itself was drawn in favour of the widow only on the basis of sole bequest to his wife. There was an application filed under Order 41 Rule 27

CPC for reception of additional evidence of a Will and to allow for the defendants to adduce evidence on the Will. The defendants in appeal had set out in their grounds that there was a Will dated 18.02.1984 that afforded proof of mutation of inheritance only to the widow as a sole beneficiary. There was not even an application under Order 41 Rule 27 CPC for reception of documents. The appellate Court confirmed the judgment of the trial Court and dismissed the appeal. The defendants have brought the second appeal along with the application under Order 41 Rule 27 CPC for reception of the Will as additional evidence.

3. If the widow was claiming only as a heir to Amar Singh, it was a destructive plea to contend that Amar Singh was not even the owner. If Amar Singh was the owner, the right to heirship to a daughter is determined at law and the plaintiffs could be non-suited only on a proof that Amar Singh had made a bequest in favour of widow only and that the transactions of sales by the widow in favour of sons or the grandsons could be supported only on such basis. If the defendants were setting up title in mother without bringing at the time of trial the evidence regarding the Will dated 18.02.1984, then the plaintiffs' case became indefeasible and they were entitled to obtain a decree coach-and-four. The defendants could never have sought for reversal in an appeal by a mere reference to a Will said to have been executed in the year 1984 by the father. The said

additional plea betrayed an abject negligence in not having made any effort to apprise themselves about how the widow could have been termed as a sole heir to her husband. Afterall, the Cantonment Board would have no access to the so-called Will, if it had not been produced by the widow after the lifetime of her husband. The widow ought to have therefore known at the time when she filed the written statement that she had right to the property only through a Will drawn exclusively in her name by her husband and that therefore she become the owner of the property. It is inconceivable that the defendants could have been known about the Will only at the time when they preferred the appeal. The existence of so-called Will ought to have known to all parties in a situation where mutation was said to have been done only on the basis of the Will. The defendants deliberately suppressed it in my view only to take a plea that Amar Singh himself was not the owner and the widow became the owner by the Cantonment Board recognizing the plea as such and entering her name in their records. Having found that such a defence failed, they were trying to prop up the Will to come with a plea that she became the exclusive owner by a bequest. The appellate Court was justified in dismissing the appeal and for me, the additional justification is that the defendants were trying to bring a deliberate false plea by introducing a Will at this belated time of 10 years after the institution of the proceedings of the year 2004.

There is no merit in the second appeal and it is dismissed.

4. The application in CM No.15330 of 2014 for reception of additional evidence is also rejected for the reasons stated above.

**(K.KANNAN)**  
**JUDGE**

14.09.2015  
sanjeev