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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-3619-1987

Date of decision : 09.11.2016

Inder Singh

... Appellant

Versus

Man Bai (deceased through LRs)

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: None for the appellant.

Mr. Mahabir Sandhu, Advocate
for the respondent.

AMIT RAWAL, J. (ORAL)

The appellant-plaintiff is aggrieved of the concurrent findings of fact, whereby the suit seeking declaration to the effect that he is owner in possession and mortgagee in possession of Khewat No.301/294 Khatoni No.888(0-2) total measuring 8 kanals 2 marlas and mortgagee in possession in agricultural land situated in Villge Rattanathan Tehsil Kosli compromised in Khewat No.300 Khatoni No.388 Rect. No.122 Killa No.21/2(5-2) and khewat No.295 Khatoni No.383 Rect. No.40 Killa No.13(8-0), 18(8-0), 23/1(4-4) measuring 20 kanals 4 marlas and khewat No.297 Khatoni No.385 Rect. No.18 Killa No.19 (7-6), 22(5-8) measuring 12 kanals 14 marlas on the premise that he is the only legal heir of Kalian @ Sardar Kaur and consequential relief of permanent injunction restraining respondent-defendant from forcible interference in the possession, has been

dismissed by both the Courts below.

The claim of the appellant-plaintiff in the suit had been that Kalian @ Sardar Kaur had executed a Will dated 12.06.1979 regarding her moveable and immovable property including the suit land but the revenue authorities erroneously mutated the property in favour of respondent-defendant vide mutation dated 02.02.1983 by ignoring the Will. The suit was instituted on 17.03.1983. In support of his case, the appellant-plaintiff has examined himself as PW-2, Kannongo PW-1, Surat Singh PW-3, Sardar Singh PW-4 and tendered a copy of Will (Ex.P-1) and *fard* jamabandi (Ex.P-2 and Ex.P-5), whereas on the contrary, the defendant appeared as DW-1 and examined Suraj Singh DW-2, Muni Lal DW-3 and Rama Nand DW-4 to contend that she is the daughter of Kalian @ Sardar Kaur and the property has been mutated by way of natural succession. The contention of the plaintiff in the memorandum of appeal had been that both the Courts have abdicated in not referring to the oral and documentary evidence i.e. *Fard* jambandi and Will which has been proved. The statement of the attesting witnesses of the Will have totally been misconstrued and misread. Both the Courts have wrongly decided that the mutation in question was legal and valid. In fact, the appellant-plaintiff is the grand-son of deceased Kalian, who had only one daughter, namely, Jarao, mother of the appellant but the same has been disbelieved, thus, urges this Court for setting aside the concurrent findings of fact by decreeing the suit as there is a gross illegality and perversity.

Mr. Mahabir Sandhu, learned counsel appearing on behalf of the respondent-defendant submits that the appellant-plaintiff has miserably

failed to prove the relationship with Jarao or with that of Kalian by complying the ingredients of Section 50 of the Indian Evidence Act.

He further submits that in order to prove the defendant being the daughter of Kalian had examined the other witnesses as noticed above. The attesting witnesses of the Will have also not supported the case of the plaintiff. The Will is unregistered. In fact the plaintiff is totally stranger to the property/Kalian and having failed to establish the relationship and rightly so, the suit has been dismissed, thus, urges this Court for affirming the findings under challenge as the concurrent findings of fact cannot be interfered until and unless there is gross illegality and perversity.

I have heard the learned counsel for the respondent-defendant and appraised the paper book and of the view that the appellant-plaintiff has miserably failed to prove the ingredients of Section 50 of the Indian Evidence Act i.e. relation of his with Kalian and deviation of the natural succession. The Will has also not been proved in accordance with law as both the witnesses have not supported the execution of the Will. Assuming for an argument sake, though not admitting, that the Will had been discarded, still the appellant-plaintiff in order to succeed, had to prove relationship, but having failed to lead any evidence viz-a-viz the son of Jarao daughter of Kalian @ Sardar Kaur, I am of the view that the onus as enshrined under Section 101 of the Indian Evidence Act has not been discharged.

For the foregoing reasons, I do not find any illegality and perversity in the judgments and decrees passed by the Courts below as the same are based upon correct appreciation of documentary as well as oral

evidence, much less, no substantial question of law arises for consideration.
The second appeal is dismissed.

09.11.2016
Yogesh Sharma

(AMIT RAWAL)
JUDGE

✓

Whether speaking/reasoned

Yes/ No

✓

Whether Reportable

Yes/ No