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

**RSA-4565-2009 (O&M)
Date of decision : 03.05.2016**

Kuldip Singh and others

... Appellants

Versus

Amar Kaur and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Munish Jolly, Advocate
for the appellants.

Mr. Malkeet Singh, Advocate
for respondent Nos.1 to 5.

1. Whether reporters of local papers 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?

AMIT RAWAL, J. (ORAL)

CM-13685-C-2009

For the reasons stated in the application, delay of 52 days in filing
the appeal is condoned.

CM stands disposed of.

RSA-4565-2009

The appellants-plaintiffs are aggrieved of the concurrent findings
of fact, whereby the suit claiming declaration to the effect that the plaintiffs are
the owner in possession of the suit land and the entries in the revenue record in
the name of respondent-defendant Nos.1 to 7 are wrong, illegal, null and void
and the sale deed dated 08.12.1997 and further mutation Nos.12562 and 12071

are also illegal and fabricated, has been dismissed.

The case set up by the appellants-plaintiffs was that the property at the hands of Darshan Singh was ancestral and it had fallen from the share of the forefathers. The appellants-plaintiffs has also taken another plea on account of services rendered, Darshan Singh executed unregistered Will dated 24.10.1984 in their favour. They did not stop here, took up another plea that the sisters had relinquished the right in their favour by executing the Power of Attorney, but power of attorney holder-maternal uncle sold the property qua 1/6th share.

Relying upon the aforementioned observations in the plaint, Mr. Munish Jolly, learned counsel appearing on behalf of the appellants-plaintiffs cited the judgment of Hon'ble Supreme Court rendered in *"M/s Taraknath V/s Sushil Chandra Dey by LRs and others", 1996(4) SCC 697* and submits that the power of attorney executed by the mother and sister has been brought on record which shows the intention to get their shares transferred in favour of the plaintiffs. They had relinquished right and interest according to their shares in the property, in dispute. During that also they did not appear, but the documents have been placed on record, for the reason best known, the same have been misread, thus, urges this Court to formulate the substantial questions of law as carved out in the memorandum of appeal.

Mr. Malkeet Singh, learned counsel appearing on behalf of the respondents-defendants No.1 to 5, submits that all the pleas are in connected decree, but mutual destructive to each other. On bare reading of the sale deed, it appears that the Will has been prepared on the blank-singed paper of Darshan Singh, even otherwise, the property being ancestral in nature has not

been proved. Mere execution of the power of attorney would not dispense with its prove until and unless those persons appear in the witness box to state contrary to what has been noticed, thus, urges this Court for affirming the findings, under challenge.

Mr. Munish Jolly, Advocate, in rebuttal, submits that in the written statement, it has been stated that the power of attorney had been executed for execution of the Will.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no merit and force in the submissions of Mr. Munish Jolly, for, on bare examination of the Will it is surrounded by the suspicious circumstances, there is a gross gap of spacing between line, it appears that the Will has been prepared on the blank-signed paper of Darshan Singh. Both the witnesses have not been deposed in terms of the provisions of Section 63 (c) of the Indian Succession Act. As regards the character and nature of the property being ancestral, plaintiff placed on record Excerpt (Ex. P-2), the same has not been proved to show that the property at the hands of the Darshan Singh was ancestral. Once the appellants-plaintiffs set up the Will, they cannot take up the plea of the property being ancestral as both are descriptive to each other.

As regards the plea of relinquishment, I am of the view that the ratio decidendi culled by the Hon'ble Supreme Court rendered in **"M/s Taraknath's"** case (Supra) would not apply as the principal had not stepped into the witness-box to depose regarding their intention to get their shares transferred. Had it been so, perhaps there would not have any occasion for the plaintiffs to file the suit. In the absence of the Will, all the siblings i.e.

successors-in-interest of Darshan Singh, would be entitled to seek estate by way of natural succession.

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

With the aforesaid observations, the appeal stands dismissed.

03.05.2016
yogesh

(AMIT RAWAL)
JUDGE