

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

RSA No.1687 of 2010
Date of decision : 09.08.2016

Raj Pal and others

...Appellants

Versus

Smt. Raj Bala 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. Devender Punia, Advocate for the appellants.

Mr. Arun Jain, Sr. Advocate with
Mr. Kushagra Mahajan, Advocate for respondents.

AMIT RAWAL, J. (Oral)

The appellants-defendants are aggrieved of the concurrent findings of fact, whereby suit at the instance of the daughter-in-law of Ram Sarup and daughter of Mewa Singh fifth son of Ram Sarup, has been decreed granting the 1/6th share in the entire holding of Ram Sarup.

Mr. Devender Punia, learned counsel appearing on behalf of appellants-defendants submits that Ram Sarup had five sons. He on his own acquired land measuring 179 kanals 17 marlas in Village Moth Rangran and 49 kanals 14 marlas at Village Budana by way of inheritance but died in the year 2005. Before death, executed registered Will dated 17.03.2005 bequeathing his entire estate in favour of his four living sons. The trial Court had discarded the Will on three following grounds:-

- i) Ram Sarup was not competent to execute the Will as it was a coparcenary property.
- ii) The other attesting witnesses of the Will did not support the case of the defendants.
- iii) Neither the original Will was proved nor any permission was sought to lead secondary evidence.

He submits that once there issue of Will was not framed, there was no need for discarding the Will and the matter is thus required to be remanded at least, to the Lower Appellate Court seeking report by framing additional issue qua Will. Ram Sarup was survived by his wife Bharpai. He further submits that Mewa Singh pre deceased Ram Sarup and his wife and the daughter i.e. the plaintiff had been taken care of and therefore, they could not stake claim in the estate of Ram Sarup. All these facts have not been noticed by both the Courts below, thus, there is illegality and perversity and thus urges this Court for formulation of the substantial questions of law as culled out in memorandum of appeal.

Mr. Arun Jain, Learned Senior Counsel assisted by Mr. Kushagra Mahajan, learned counsel for respondents, submits that it is settled law that even if the issue is not framed and parties lead evidence, Court can always decide on the genuinity of the documents. The relationship of the plaintiff with Mewa Singh was not denied. The Will had not been proved in accordance with law as it has not seen the light of the day and, therefore, property had rightly been ordered to be succeeded by the natural succession. Concurrent findings of fact cannot be interfered with until and unless there is gross illegality and perversity and thus urges this Court for affirmation of the findings under challenge.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is no force and merit in the submission of Mr. Punia, for, defendants had miserably failed to prove the bequeathing of the estate of Ram Sarup in favour of his four sons in view of the absence of the original Will, and permission of the Court to prove on record the same by way of secondary evidence and, therefore, examination of the attesting witnesses would pales into insignificance. An irresistible conclusion has been drawn by the trial Court after discarding the Will that he died intestate and, therefore, rightly so, the plaintiff had been granted 1/6th share in his estate as he had five sons and one widow Bharpai. I am of the view that findings given by the Courts below are based upon equity and as well as on the basis of the law and do not call for interference, much less, based upon appreciation of oral and documentary evidence also.

Mr. Punia, further submits that Courts fees qua claiming of the profit of crop had not been paid. In case respondent-plaintiff files the execution application, they shall be at liberty to seek relief aforementioned by paying advalorem courts fees, as already been noticed by the lower Appellate Court.

No ground for interference is made out, much less, no substantial questions of law arises for determination.

Dismissed.

09.08.2016

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:- Yes

Whether reportable:- Yes/No