

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

R.S.A.No.5140 of 2010 (O&M)

Date of Decision: April 04, 2016

Harmesh Singh & others

...Appellants

Versus

Baljit Kaur and others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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?

Present: Mr.Vikas Bahl, Senior Advocate with
Mr.Abhilaksh Grover, Advocate,
for appellant Nos.2 to 4.

Mr.R.S.Chauhan, Advocate,
for respondent Nos.1 & 2.

Mr.Sarju Puri, Advocate,
for respondent No.3.

AMIT RAWAL, J. (Oral)

The appellant-defendants are aggrieved of the judgment and decree of the Lower Appellate Court, whereby the suit of the respondent-plaintiff has been decreed granting them declaration that they are joint owners and in joint possession of the land to the extent of 1/5th share each in the land measuring 35 kanals 0 marla and as a consequential relief, also restrained the appellant-defendants from alienating and mortgaging the property in dispute to the extent of their share.

Mr.Vikas Bahl, learned Senior Counsel assisted by

Mr.Abhilaksh Grover, appearing on behalf of the appellant-defendants

submits that the property, aforementioned, was owned by Sohan Singh. He died on 28.9.1992. Before his death, he executed a Will dated 25.1.1991. The Will was attested by two attesting witnesses, who were examined in mutation proceedings, much less even the Scribe. However, the Scribe before the trial Court turned hostile and at the time when the suit was filed by the respondent-plaintiffs in 1997, both the attesting witnesses had also died. The Appellate Court has non-suited the appellant-defendants on the ground that they failed to prove the Will. He further submits that once the order of mutation noticing the statements of the attesting witnesses has been proved on record, the same should be read into evidence. There was no need of even proving the certified copies of the statements of the attesting witnesses as per the provisions of Section 33 of the Indian Evidence Act and, thus, urges this Court to formulate substantial questions of law as culled out in the memorandum of appeal.

Mr.R.S.Chauhan and Mr.Sarju Puri, learned counsel appearing on behalf of the respondent-plaintiffs submit that Harmesh Singh, during the pendency of the appeal, who was also beneficiary of the Will to the extent of 25%, has withdrawn the appeal. Now the appeal is at the instance of his sons, who are grand-sons of Sohan Singh. They further submit that even the statutory compliance of Section 69 of the Indian Evidence Act has not been done, in essence only Mohinder Kaur, who is also an illiterate and rustic lady, could not identify the signatures of Sohan Singh and no other independent witness in this regard has been examined. The Lower Appellate Court, after examining the evidence on record, held that the parties to the lis are entitled to their respective shares by way of natural succession and, thus, urge that no substantial question of law arises for determination.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no merit in the submissions of the learned counsel for the appellant-defendants for the reason that the appellant-defendants have miserably failed to discharge the onus, much less burden by not statutorily complying the provisions of Section 69 of the Evidence Act. Even the certified copies of the statements of the attesting witnesses recorded before the mutation proceedings have not been tendered. The respondent-plaintiffs had two forums either to impugn the order of mutation by availing statutory remedy under the revenue courts or to knock the door of the Civil Court, which has been followed in the instant case.

Once the Will, aforementioned, has not been proved by the defendants, the consequential affect of the same assessed is that successor-in-interest of ancestral Sohan Singh had inherited the rights by way of natural succession and rightly so, this has been done when the claim of the respondent-plaintiffs was to the extent of 1/5th share.

I do not intend to differ with the findings rendered by the Lower Appellate Court. No substantial question of law arises for determination.

The appeal stands dismissed.

April 04, 2016
ramesh

(AMIT RAWAL)
JUDGE