

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

RSA No.3894 of 2011 (O&M)

Date of decision : 02.05.2016

Paramjit Singh and others

...Appellants

Versus

Satya Nand 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. Arun Jain, Sr. Advocate with  
Mr. Varun Parkash, Advocate for the appellants.

Mr. Ivneet Pabla, Advocate for respondent Nos.16 to 18.

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**AMIT RAWAL, J. (Oral)**

The appellants-defendants are aggrieved of the judgment and decree rendered by the lower Appellate Court, whereby suit at the instance of respondents-plaintiffs has been decreed and the judgment and decree of the trial Court dismissing the suit, has been reversed.

Mr. Arun Jain, learned Senior Counsel assisted by Mr. Varun Parkash, learned counsel appearing on behalf of appellants submits that common ancestral Braham Parkash was the owner of the land but unfortunately died on 14.06.1995. His entire estate was mutated in favour of four persons namely Vidya Devi Daughter, Ram Kumar son, Baldev Singh

son, Jagdish Chander son. Vidya Devi and LRs of Ram Kumar sold their 1/4<sup>th</sup> share in favour of the appellants-defendants No.1 to 6 vide sale deed dated 31.10.1995. Savitri Devi claimed herself to be daughter of Brahm Parkash instituted a civil suit No.1629 of 23.11.1995. The said suit was contested but however finding came that she was daughter of Brahm Parkash. Accordingly 1/4<sup>th</sup> share of Vidya Devi and Ram Kumar was taken out of sale deed. The aforementioned finding was challenged but attained finality. He submits that in the aforementioned suit instituted, Baldev Singh, Jagdish Chander respondents-plaintiffs herein were impleaded as defendant Nos.14 and 15 as they were duly served but did not choose to contest. After the matter clinched between the siblings, Baldev Singh being plaintiff and Jagdish Chander impleaded as defendant No.18 instituted the present suit by propounding the unregistered Will dated 14.08.1994. The lower appellate Court after examining evidence on record erroneously decreed the suit without referring to the findings already arrived in the suit aforementioned and urges this Court to formulate following substantial question of law for determination by this Court:-

1. Whether the First Appellate Court being the last Court of facts and law enjoined upon obligation by referring all the documentary and oral evidence on record?
2. Whether in the absence of the examination of such documents, the judgment and decree of the lower Appellate Court is sustainable as having been suffered from illegality and perversity?

Mr. Ivneet Pabla, learned counsel appearing on behalf of respondents No.16 to 18 submits that Lower Appellate court after examining entire evidence found that Will aforementioned has been proved through scribe and one of the attesting witness. Requirement of Section 68 of the Indian

Evidence Act, has been complied with, thus, other siblings namely Vidya Devi and Ram Kumar did not have any right as Brahm Parkash did not bequeath anything in their favour and urges this Court for affirming the findings rendered by the lower Appellate Court.

I have heard learned counsel for the parties and appraised the paper book and of the view that lower Appellate Court abdicated in not discharging the obligation by referring to Ex.DA/3 i.e. judgment rendered by the trial Court in Civil Suit No.1629 of 1995 titled as Balwinder Kaur and others Vs. Paramjit Singh and others. It is a matter of record that Baldev Singh and Jagdish Chander were arrayed as defendant Nos.14 and 15 though they did not contest the case as they were proceeded ex parte. The said judgment and decree has attained finality. All these facts have not been noticed by the lower Appellate Court, thus in my view the judgment and decree suffers from illegality and perversity.

Accordingly, impugned judgment and decree of the lower Appellate Court is set aside and the matter is remitted back to the lower Appellate Court to decide the appeal afresh after taking into consideration all the factors i.e. documentary and oral evidence.

Appeal stands disposed of.

Parties are entitled to raise all the points in respect of their pleas.

Record of the Courts below be sent back for adjudication of the matter.

Parties through their counsel are directed to appear before the lower Appellate Court on 26.05.2016.

**02.05.2016**

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**(AMIT RAWAL)**  
**JUDGE**