

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
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RSA No. 4325 of 2011
Date of Decision: 23.04.2016

Bharat Bhushan and others

.....APPELLANTS

VERSUS

Meenaxi Bansal and another

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

PRESENT: Mr. Sudhir Mittal, Advocate,
for the appellants.

AUGUSTINE GEORGE MASIH, J (ORAL)

Challenge in this appeal is to the judgment and decree passed by the Additional Civil Judge (Senior Division), Hisar dated 26.02.2005, whereby the suit for declaration to the effect that the registered Will No. 48 dated 14.06.1993 executed by the deceased Onkar Parshad son of Sh. Mangat Rai son of Sh. Kalu Ram in favour of the defendant-Raj Kumar is null and void on the ground that the said Will could not have been executed by him as it was an ancestral property and further that a *Tamleek Nama* has been executed by Mangat Rai during his life time on 04.11.1955, according to which the property had been distributed amongst his sons by him, which could not have been made the subject matter of the Will as it is an ancestral property, has been dismissed, appeal against which preferred by the appellants-plaintiffs has also been dismissed by the Additional District Judge, Hisar on 15.06.2011.

2. It is the contention of the learned counsel for the appellants that the suit, as has been filed by the appellants-plaintiffs should have been decreed in the light of the fact that the appellants-plaintiffs have been able to prove on the basis of *Tamleek Nama* dated 04.11.1955 that the shop was partitioned by Mangat Rai, father of Onkar Parshad between his sons during

his life time, which shows that the shop was an ancestral property and thus, the findings, as recorded by the Courts below, cannot sustain.

3. This contention of the learned counsel for the appellants cannot be accepted in the light of the observations made by the Lower Appellate Court in para-13 of the judgment where it has been categorically stated that the ground that the property is ancestral in nature and, therefore, could not have been willed out, has not been agitated by the counsel before the Lower Appellate Court. The said plea, therefore, at this stage, cannot be taken and gone into by the Court especially when no review application has been filed by the appellants-plaintiffs before the Courts below had this fact been not correct as recorded. A categoric finding has been returned with regard to the due execution of the will dated 14.06.1993 as executed by Onkar Parshad son of Mangat Rai.

4. No other point has been raised or argued by the learned counsel for the appellants.

5. There being concurrent findings recorded by the Courts below on the facts of the case, which have been found to be based on proper appreciation of the pleadings and the evidence produced by the parties, there is no illegality in the impugned judgments passed by the Courts below. Further, there is no substantial question of law in the present appeal, which requires consideration of this Court.

6. In view of the above, finding no merit in the present appeal, the same stands dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

April 23, 2016

pj