

RSA-1023-2015(O&M)

1

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

RSA-1023-2015(O&M)

Date of decision : 08.01.2016

Ashok Kumar

... Appellant

Versus

Surinder Kumar and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. S.K.Jain, Advocate with
Mr. Akshay Jain, Advocate
for the appellant.

REKHA MITTAL. J.

The present appeal has been directed against the judgments and decrees passed by the Courts below whereby the suit filed by the plaintiff (appellant herein) claiming 1/5th share in the land in dispute left behind by his father Jagdish Rai, has been disallowed.

The appellant staked his claim to 1/5th share in the suit property on the basis of natural succession and challenged the Will dated 15.03.1995 alleged to be executed by Jagdish Rai in favour of his another son Surinder Kumar (respondent No.1). The Courts below non-suited the appellant primarily on the ground that in the proceedings for sanction of mutation in respect of suit land on the basis of Will dated 15.03.1995 propounded by Sh. Surinder Kumar, the Class I heirs including the appellant of Sh.Jagdish Rai made a statement admitting correctness and

genuineness of the Will in question and on that basis, contested mutation No.1977 was sanctioned in favour of Sh. Surinder Kumar by the Sub Divisional Officer (Civil), Ellenabad on 26.07.2001 and thereafter Sh.Jagdish Rai being the sole owner of the property alienated the suit land in favour of respondents No.2 to 6 vide registered sale deed dated 29.08.2001.

Counsel for the appellant has submitted that Will dated 15.03.1995 propounded by Sh. Surinder Kumar, the brother of the appellant has not been proved in accordance with law and the same is surrounded by suspicious circumstances and thus liable to be discarded. It is further argued that the Will was allegedly scribed by the brother-in-law of Surinder Kumar and there are material contradictions in the statements of scribe vis-a-vis the attesting witness of the Will. It is further argued that both the courts have failed to take into consideration vital lacunae in the case of respondent No.1 and thus, the judgments passed by the Courts below cannot be allowed to sustain.

I have heard counsel for the appellant, perused the records particularly the judgment passed by the Additional Civil Judge (Senior Division), Ellenabad, affirmed in appeal by the Additional District Judge, Sirsa.

Counsel for the appellant has not disputed that there was contest between the parties with regard to sanction of mutation in respect of the suit land and for that reason it was sent to the Sub Divisional

Officer (Civil), Ellenabad for adjudication being contested mutation. It has been proved on record that in the proceedings before the aforesaid authority, the contesting parties including the present appellant made a statement admitting the correctness of the Will propounded by Sh.Surinder Kumar. It is not the case of the appellant that the said statement made by him as well as other Class I heirs of Sh.Jagdish Rai impleaded as proforma respondents, is the result of fraud, undue influence, duress etc. As per settled position in law, admission by a party is the best evidence and benefit of admission is to be derived by the party in whose favour the said admission was made. As the appellant admitted the correctness of the Will in dispute in the mutation proceedings and has not in any manner retracted from his admission, the appellant cannot be heard to say that either he is entitled to inherit to the estate of Jagdish Rai on the basis of natural succession or Sh. Surinder Kumar cannot be allowed to exclude other Class I heirs of Jagdish Rai on the basis of Will dated 15.03.1995. This apart, as the appellant admitted the correctness of the Will in the mutation proceedings, he cannot be allowed to blow both hot and cold in the same breath and open challenge to the Will in dispute. I do not find any error much less illegality in the well founded findings recorded by the Courts below.

For the reasons stated hereinbefore, no substantial question of law arises for adjudication as has been sought to be raised in para 14 of the grounds of appeal. Finding no merit, the appeal is dismissed in limine

with no order as to costs. As a natural corollary, the judgments and decrees passed by the Courts are affirmed.

(REKHA MITTAL)
JUDGE

January 08, 2016.
Davinder Kumar