

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

RSA-1025 of 2015 (O&M)

Date of decision: 09.02.2016

Gurcharan Singh

...Appellant

Versus

Charanjit Kaur and another

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Sherry K. Singla, Advocate
for the appellant.

Jitendra Chauhan, J. (Oral)

The plaintiff/appellant filed suit for declaration. The trial Court vide judgment and decree dated 16.07.2013, dismissed the suit.

2. Aggrieved against the findings of trial Court, the plaintiff/appellant filed an appeal which was dismissed by the learned Appellate Court, vide judgment and decree, dated 05.12.2014.

3. The Appellate Court affirmed all the findings recorded by the trial Court after discussing and evaluating the

oral as well as documentary evidence on record, hence, the instant appeal at the behest of the plaintiff/appellant.

4. The dispute is *inter se* the brothers, the sons of Meghnath who has not been heard for more than 13 years prior to the filing of the suit. The suit for declaration was filed to the effect that the plaintiff is the joint owner and in joint possession of the land on the basis of Will of Meghnath dated 27.12.1992. After appreciation of the findings on record, the trial Court recorded the findings that there were contradictions in the statement of PW-1, Karamjit Singh to the extent that he has seen the original Will 7 to 9 ago and even the plaintiff who appeared as PW-4 had stated in his statement recorded in the earlier litigation i.e. State Vs. Tarsem Chand, Ex.D1 pertaining to the Will in question. This stand is complete contradiction of the stand taken by the plaintiff in the suit. The original Will has not come on record for the reasons best known to the plaintiff-appellant. The trial Court further recorded that the Will was surrounded by suspicious circumstances because as per the statement Ex.D1 made in the earlier suit, the plaintiff had stated that the Will was prepared in his presence and was registered document whereas neither the original will was produced nor

any record was summoned from the office of Sub Registrar establishing the existence of the Will. On the appeal preferred by the plaintiff, the appellate Court affirmed the findings by observing that the plaintiff/appellant had failed to explain as to how he could not hold the Will in last 13 years which otherwise had been lying in his house. Keeping in view the contradictory stand taken by the plaintiff/appellant in the criminal case titled as State Vs. Tarsem Chand and in the civil suit, the Appellate Court affirmed the findings recorded by the trial Court and dismissed the appeal.

5. It is argued on behalf of the appellant that the Will in question is proved from the testimony of PW1, Karamjit Singh, the scribe of the Will, PW-2 Budh Singh and PW-3, Harbans Singh, the attesting witnesses and PW-5 Navdeep Gupta, the document expert. He states that the adverse inference has been drawn for not placing on record the original Will whereas the case of the appellant is that the original Will has lost.

6. Heard.

7. The arguments raised by learned counsel for the appellant pertain to the factual aspect of the matter. The Courts below have recorded the findings of fact based on evidence. It is

proved on record that the appellant has taken contradictory stand in a criminal case and the present case which is a sufficient ground to draw adverse inference against him. The original Will has not come on record. Therefore, in the considered opinion of this Court, no law point is involved in the present appeal and the view taken by the Courts below is as per record. This Court is not inclined to interfere in the findings of fact particularly when the appellant has himself taken a contradictory stand. Accordingly, no interference in the well reasoned judgments is called for.

Dismissed.

09.02.2016

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(JITENDRA CHAUHAN)
JUDGE