

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

**RSA No.3595 of 2016 (O&M)  
Date of Decision.27.07.2016**

Sadhu Singh

.....Appellant

Vs.

Sukhpal Singh and others

.....Respondents

Present: Mr. Sanjiv Gupta, Advocate  
for the appellant.

**CORAM:HON'BLE MR. JUSTICE AMIT RAWAL**

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?

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**AMIT RAWAL J. (ORAL)**

**C.M. No.9395-C of 2016**

For the reasons stated in the application, delay of 26 days in refiling the appeal is condoned.

Application is allowed.

**RSA No.3595 of 2016**

The appellant-defendant No.2 is aggrieved of the concurrent finding of fact rendered by both the Courts below whereby suit bearing No.254-C of 2009/2013 at the instance of plaintiff-Sukhpal Singh challenging the Will dated 28.11.2007 and consequential mutation in favour of the defendants by relying upon the judgment and decree dated 28.10.2006, has been decreed .

Mr. Sanjiv Gupta, learned counsel appearing for the appellant submits that Gurbachan Singh, father of the parties to the lis and father-in-law of Jasbir Kaur suffered a decree dated 28.10.2006 bequeathing his entire property among all his siblings including the daughter-in-law. After his death, the appellant-defendant No.2 on the basis of the Will dated 28.11.2007 got the

land mutated and as per the Will, the respondent-plaintiff was not given any share on the premise that he was already taken care of. The Courts below have erroneously decreed the suit as the Will, aforementioned, has been proved in accordance with provisions of Section 68 of the Indian Evidence Act, much less, Section 63-C of the Indian Succession Act, thus, urges this Court for setting aside of the judgment and decree under challenge by formulating the substantial questions of law drawn in the memorandum of appeal.

I have heard learned counsel for the appellant-defendant No.2 and appraised the paper book. Gurbachan Singh was not having any right and title in the property by virtue of the judgment and decree dated 28.10.2006. Even the said fact was not incorporated in the revenue record. It is conceded position that a person who has no ownership/title, cannot transfer the same by any testamentary document or any other mode and procedure. Thus, the Will dated 28.11.2007, though validly proved, cannot be executed or looked upon or pressed into service for want of ownership/title in respect of the suit property as all the siblings had been given their respective shares.

In view of the aforementioned facts, I do not find any illegality and perversity in the judgment and decree passed by the Courts below, much less, no substantial question of law arises for consideration as the findings rendered by the Courts below are based on correct appreciation of documentary as well as oral evidence. The second appeal is dismissed.

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

**July 27, 2016**  
Pankaj\*

Whether speaking/reasoned      Yes

Whether reportable      No