

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

RSA No.3772 of 2015 (O&M)

Date of decision:04.03.2016

Baldev Kaur (deceased) through LRs ... Appellants

Vs.

Gurmit Kaur 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. Sanjay Majithia, Senior Advocate with
Mr. Rajesh Kumar Bhagal, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

The appellant-plaintiff is aggrieved of the judgments and decrees of both the Courts below, whereby, claim vis-a-vis declaration regarding ownership of the land measuring 30 kanals 13 marlas being 105/630th share out of the land measuring 183 kanals 15 marlas on the basis of the registered Will dated 20.11.1991, has been rejected.

It has been pleaded that Joginder Singh had three brothers and two sisters namely, Niranjana Singh, Narinder Singh Kulwant Singh, Smt. Avtar Kaur and Smt. Santosh Kaur. Plaintiff is the daughter of Niranjana Singh (brother of Joginder Singh). Joginder Singh used to live with Niranjana Singh and his family had a joint ration card with them (Ex.P2). On account of services given, he

executed a Will aforementioned. The mutation on the basis of the Will was entered. The same was set aside by the Collector and assailed before the Commissioner which was dismissed on the ground of limitation. In these circumstances, necessity arose to file the aforementioned suit.

Mr. Sanjay Majithia, learned Senior Advocate assisted by Mr. Rajesh Kumar Bhagal, Advocate appearing on behalf of the appellant submits that throughout the appellant-plaintiff had been in possession. No steps have been taken by the defendants in seeking possession, therefore, limitation to seek possession has already been lapsed. By way of additional evidence, even death certificate of scribe is sought to be placed on record and therefore, the appellant-plaintiff was prevented from proving the Will as per the provisions of Section 68 of the Indian Evidence Act and the Court should have invoked the provisions of Section 69 of the Indian Evidence Act. Having not been done so therefore, there is illegality and perversity in the findings rendered by both the Courts below, much less, substantial questions of law arise for determination of this Court.

I have heard learned counsel for the appellant-plaintiff and appraised the judgments and decrees of the Courts below and of the view that there is no substance in the plea of Mr. Majithia for the reasons that Will did not disclose the exclusion of legal heirs of Joginder Singh while giving the benefit to the niece. There is candid admission of the plaintiff that Joginder Singh was not having any

dispute with others. The defendants disputed the execution of the Will. Once the property has been mutated in the name of the appellant on the basis of the mutation as per the submission of Mr. Majithia, there was no occasion for the plaintiff to invoke the jurisdiction of the trial Court under Section 9 of the Code of Civil Procedure.

It is a matter of record that Joginder Singh remained admitted in CMC Ludhiana from 19.10.1991 to 31.10.1991 and the telegram in this regard was sent to the higher authority regarding suspicious behaviour of the plaintiff. In view of the aforementioned facts, the Courts below found that Will was surrounded by suspicious circumstances, therefore, declined the aforementioned claim.

In view of the aforementioned observations, I do not intend to differ with the findings rendered by both the Courts below, which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination of this Court.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

March 04, 2016
savita