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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-5124-2015 [O&M]

Date of Decision : February 12th, 2016

Kuldeep Singh [since deceased] through his LRs

.... Appellants

Versus

Karnail Singh and others

.. Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

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| 1. Whether Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to the Reporters or not? | |
| 3. Whether the judgment should be reported in the Digest? | Yes |

Present Mr. K.K.Garg, Advocate,
for the appellants.

SHEKHER DHAWAN, J.

Present Regular Second Appeal is directed against the concurrent findings of both the Courts below, whereby, the the Court of first Instance partly decreed the suit for permanent injunction and declaration vide judgment and decree dated 11.07.2013 and the Court of first Appeal dismissed the appeal vide judgment and decree dated 23.05.2015.

2. For the sake of convenience, parties are being referred to as per their status before the Court of first Instance.

3. Relevant facts of the case for the purpose of decision of this appeal; that the plaintiffs had filed a suit for declaration to the effect that they are owners in joint possession of ½ share in *bara* in dispute on the basis of registered Will dated 3.4.2001 executed by Mohinder Singh son of

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Santu in favour of his grand sons and compromise dated 30.4.2006 allegedly executed by the parties i.e., plaintiffs No. 1, 2 and 5 is illegal as the same was under the threat of life and same has got no effect upon the proprietary rights of the plaintiffs.

4. Having contested the suit, taking the plea that the Will dated 3.4.2001 was never executed, it was pleaded that the family dispute was amicably settled on the basis of compromise dated 3.5.2006 and the suit of the plaintiffs was prayed to be dismissed being without any merit.

5. On the pleadings of the parties, issues were framed. Parties led their respective evidence and after appreciating the entire oral as well as documentary evidence brought on record by the parties, the Court of first instance partly decreed the suit to the effect that the plaintiffs are co-sharers in joint possession to the extent of 15/128th share in khasra No. 197 (1-0). The appeal filed before the Court of first Appeal was dismissed. As such, the present Regular Second Appeal.

6. Learned counsel for the appellants submitted that the Courts below ignored the Will simply on the ground that the same has not been proved as per law. An application for additional evidence under Order 41 Rule 27 CP was filed and the said application was dismissed by the Court of first Appeal while dismissing the main appeal.

7. Learned counsel for the appellants submitted that the defendants admitted the execution of Will [Ex.P1] by Mohinder Singh in favour of his grandsons and in view of that, the Will was not required to be proved and findings of Courts below are liable to be set-aside and it was prayed that the appeal be accepted.

8. Having considered the submissions made by learned counsel for

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the appellants and appraisal of record, this Court is of the view that the matter in controversy has already been considered by both the Courts below and concurrent findings have been recorded. As regards to leading of additional evidence, the Court of first appeal has already dealt with this point in detail because earlier the plaintiffs failed to lead any evidence to prove due execution of Will, though the case of the plaintiffs was mainly based upon such a plea. None of the plaintiffs had stepped into the witness box in support of the pleadings.

9. The Courts below have discussed in detail the entire evidence led by the plaintiffs which consists of statement of PW-1, Amarjit Kaur vide which photocopy of Will dated 3.4.2001 [Ex P1] was placed on file and even original Will was never produced. Apart from that, the plaintiffs produced death certificates of Mohinder Singh, Sarabjit Singh and Kuldeep Singh as Ex. P2, P3 and P4 respectively and that was the only evidence led by the plaintiffs. So, there was no question of proving the Will before the Courts below and the Courts below have rightly returned concurrent findings of facts and the same do not call for any interference.

10. Learned counsel for the appellants also took the plea that the appellants be allowed to withdraw the present suit with liberty to file a fresh one because fresh cause of action has arisen. On this point, reliance was placed on the judgment of a Co-ordinate bench of this Court in **Daljit Kaur etc. Vs. Ujjagar Singh etc.**, 2001(3) RCR [Civil] 847, wherein suit was allowed to be withdrawn in case there was fresh cause of action. However, in the case in hand, there is no fresh cause of action at all on the basis of which permission for withdrawal of the suit with liberty to file fresh one could be given because the dispute between the parties has already been

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settled on the basis of evidence adduced by the parties. Such a permission cannot be granted just to fill up the lacunas.

11. In view of the above, the present Regular Second Appeal against concurrent findings of facts is not maintainable and no ground to grant permission to withdraw the main suit with liberty to file fresh one is made out without there being any fresh cause of action. There is no substantial question of law involved in the present appeal and hence, the same is not maintainable under Section 100 of the Code of Civil Procedure. Such a view was taken by Hon'ble Supreme Court in case **Santosh Hazari Vs. Purushottam Tiwari (Dead) by LRs.**, JT 2001(2) SC 407.

12. The Regular Second Appeal stands dismissed being devoid of any merit.

(SHEKHER DHAWAN)
JUDGE

February 12th, 2016
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