

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

RSA No.3018 of 2014 (O&M)

Date of Decision.09.12.2016

Surat Singh

.....Appellant

Vs

Balraj Singh and others

.....Respondents

Present: Mr. C.S. Bagri, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

The appellant-defendant is aggrieved of the concurrent finding of fact whereby the suit of the respondents-plaintiffs seeking declaration to the effect that the plaintiffs are owners in possession (qua the share of Aas Kaur (deceased) widow of Jind Singh son of Sudh Singh, resident of village Allipur, Tehsil Patti, Distt. Tarn Taran) of land measuring 9 kanals 12 marlas which forms 1/20 share out of land measuring 192 kanals 14 marlas as mentioned in jamabandi for the year 2006-07 situated in village Allipur Tehsil Patti, Distt. Tarn Taran and the defendant has got no right, title or interest with the above said land in dispute, with consequential relief of permanent injunction, thus, restraining the defendant forever from alienating the defendant forever from alienating the suit land with anybody in any way, except due course of law and in alternative for joint possession of the above said land, has been decreed by both the Courts below.

The categoric case of the respondents-plaintiffs before the trial Court was that they are the daughters of Aas Kaur (since died in the year 1969) and therefore, are entitled to inherit the property qua half share

each. The stand of the appellant-defendant, according to Mr. Bagri, was

that Aas Kaur during her life time executed a Will dated 24.03.1969 in favour of defendant who is none else but the nephew of the husband of Aas Kaur. He had been in possession since long and in this regard, jamabandi for the year 2006-07 and the mutation have been brought on record. He further submits that there is admission of the plaintiffs regarding his possession throughout till 1969 when the Aas Kaur died. The Kanungo had brought the original Will but the Courts below have committed illegality in forming an opinion that it was a photocopy. All these facts, if looked into by the Courts below, the suit was liable to be dismissed, thus, there is illegality and perversity.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit in the aforementioned submissions of Mr. Bagri, for, DW2, attesting witness when examined had seen only the photocopy of the Will. He had not been confronted with the original Will, which according to Mr. Bagri was brought on record through the testimony of Kanungo. Having failed to do so, in my view, there is no compliance of provisions of Section 68 of the Indian Evidence Act and Section 63(c) of the Indian Succession Act.

There is another aspect of the matter. The Will is unregistered. Had it been registered, there could be some presumption of truth by producing the Registrar, to prove the factum of the same. Having failed to do so in the presence of natural heirs, appellant-defendant, being related to husband of Aas Kaur, cannot inherit the property. It does not sound logical as to how Aas Kaur had extra love and affection towards the appellant-defendant than her actual children. Even for establishing the claim of adverse possession, jamabandies for more than 12 years has to be placed on

record whereas the jamabandi for the year 2006-07 has been produced which is only five years prior to the filing of the suit. No other documentary evidence has been produced on record to establish the long, settled and uninterrupted possession, thus, plea of adverse possession had rightly been rejected.

For the foregoing reasons, I do not intend to differ with the findings rendered by both the Courts below as the same are based upon correct appreciation of documentary as well as oral evidence. No ground for interference is made out. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

December 09, 2016
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No