

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

RSA No.2493 of 2013 (O&M)

Date of decision : 18.12.2017

Balwinder Kaur and others

...Appellants

Versus

Amar Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Harsh Aggarwal, Advocate for the appellants.

ANIL KSHETARPAL, J. (ORAL)

The defendants-appellants are in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below.

The plaintiffs had filed a suit for declaration with respect to the property of their father Banta Singh who alleged to have died on 13.09.1976 in Malaysia.

On the other hand, the defendants had claimed that Banta Singh remained alive upto the year 1992 and he had executed a Will-testamentary document in favour of the defendants on 03.04.1979.

The plaintiffs in order to prove the date of death, produced on file Ex.P1 showing that Banta Singh had died on 13.09.1976.

Both the Courts below after appreciating the evidence have found that the defendants have failed to produce any evidence to prove that Banta Singh had ever come back to India in 1976 as is being claimed and

thereafter he remained alive upto the year 1992. With these findings, the Courts below have held against the appellants-defendants.

I have heard the learned counsel for the appellants at length and with his able assistance gone through the judgments passed by both the Courts below.

Learned counsel for the appellants has submitted that the appellants had led oral evidence of the witnesses to prove that Banta Singh was alive upto the year 1992. This oral evidence has already been appreciated by both the Courts below and the Courts have found that the defendants have failed to prove that Banta Singh remained alive after 1976.

Learned counsel for the appellants has further submitted that in fact the dispute between the family members was settled and it was agreed that the property belonging to Joginder Singh, father of the defendants in Malaysia, would be given to the plaintiffs (the family of the Banta Singh) whereas the property of Banta Singh situated in India was agreed to be given to the defendants-appellants.

However, I am afraid that such arguments would not help the appellants because the defendants-appellants have claimed succession on the basis of the Will dated 03.04.1979. Once the defendants-appellants have failed to prove that Banta Singh was alive on the day the Will allegedly setup by the defendants-appellants was executed allegedly by Banta Singh, therefore, this argument of the learned counsel would not come to the rescue of the defendants-appellants.

In view of the concurrent findings of fact arrived at by both the Courts below which are neither shown to be erroneous nor perverse, this

Court does not find any good ground to interfere with the same.

Regular Second Appeal is dismissed.

All the miscellaneous applications shall stands disposed of, in terms of the abovesaid judgment.

18.12.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No