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

**RSA No.5735 of 2017 (O&M)
Date of Decision: 08.12.2017**

Ashok

.....Appellant

Vs

Smt. Nirmala Devi and others

....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Ms. Deepa Jain, Advocate
for the appellant.

RAJ MOHAN SINGH, J.

[1]. Defendant is in Regular Second Appeal against the judgments and decrees passed by the Courts below in a suit for declaration, permanent and mandatory injunction.

[2]. Brief facts are the plaintiff filed a suit with the averments that the husband of the plaintiff namely Gopal was owner in possession of 17 *Kanals* 1 *Marlas* of land being 1/3rd share of total land measuring 51 *Kanals* 5 *Marlas*. Husband of the plaintiff died on 18.08.2006 leaving behind the plaintiff as only legal heir, but the defendants had got sanctioned the mutation of Gopal in their favour as well as in favour of their mother Anchala by showing themselves as legal heirs of Manphool.

Smt. Anchala also died and the defendants also got sanctioned the mutation of her share in their favour. Plaintiff assailed the mutation No.3265 dated 29.05.2008 and subsequent mutation No.3541 dated 02.12.2011 to be illegal, null and void.

[3]. In the written statement filed by the defendants, the title in favour of Gopal was denied. The relationship of the plaintiff with Gopal was also denied and the plaintiff was not admitted to be the legal representative of deceased Gopal, rather the defendants claimed themselves to be owner in possession. The collusion of the defendants with the *Lambardar* was also denied.

[4]. Both the Courts below have relied upon the statement of defendant Ashok while appearing as DW-1, wherein in para no.3 of the affidavit, he has denied title in favour of the plaintiff and thereafter he admitted that the plaintiff is widow of deceased Gopal Singh. While appearing in the witness box, the witness on the basis of affidavit Ex.DW-1/A admitted the factum of plaintiff being legally widow of deceased Gopal Singh. It was also admitted by defendant No.1 that the suit filed by the plaintiff deserves to be decreed with costs.

[5]. The aforesaid statement of DW-1 was in corroboration of the case of the plaintiff on the strength of evidence of PW-1 to PW-6, proving that husband of the plaintiff was owner in

possession of the land measuring 17 *Kanals* 1 *Marlas* being 1/3rd of total land measuring 51 *Kanals* 5 *Marlas*.

[6]. DW-1 Ashok Kumar was subjected to cross-examination wherein he had admitted the marriage of the Manphool, Kalu and Gopal. He had also admitted that name of wife of the Gopal is Nirmala, who is still alive. The witness had also admitted that Manphool, Kalu and Gopal have already died. The witness further admitted that the mutation was sanctioned in his favour in respect of land of Manphool and Gopal by furnishing affidavit. The factum *qua* share of Gopal to the extent of 1/3rd share in total land measuring 51 *Kanals* 5 *Marlas* was also admitted by the witness. The factum of marriage of the plaintiff with Gopal was also admitted. Since the entire case of the plaintiff was admitted by defendant No.1 in his testimony, therefore, fact admitted was considered to be just and appropriate to decree the suit of the plaintiff.

[7]. Learned counsel for the defendant/appellant submitted that recital of the affidavit was erroneous inasmuch as that for correction of the same, an application for amendment was moved before the trial Court, but the same was declined. Learned counsel further admitted that against the dismissal of the application for amendment, no revision petition was preferred by the defendant at any point of time, nor the said

order has been assailed in the present appeal.

[8]. In view of admission made by defendant No.1 while appearing as DW-1, there was no triable issue before the trial Court. The appellant has already admitted the case of the plaintiff. No law point worth cognizance is involved in the present appeal and the judgments and decrees passed by the Courts below concurrently while decreeing the suit of the plaintiff cannot be faulted with. Even on facts, no law point for consideration can be argued before the Court.

[9]. In view of above, no indulgence can be granted in this appeal. The appeal is found to be totally bereft of merits and the same is dismissed accordingly.

[10]. Since the appeal has been dismissed on merits, therefore, there is no necessity of deciding any application for condonation of delay in refiling or filing the appeal. All other civil misc. applications are also disposed of accordingly.

December 08, 2017

(RAJ MOHAN SINGH)
JUDGE

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Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No