

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

**RSA-436-2011 (O&M)
Date of decision: 03.05.2018**

Jaswinder Singh and another

.....Appellants

versus

Baldev Kaur and others

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.K.S.Chahal, Advocate for the appellants
Mr.A.P.S.Sandhu, Advocate for the respondents

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
- 2. To be referred to the Reporters or not ?*
- 3. Whether the judgment should be reported in the Digest?*

Kuldip Singh, J. (Oral)

Impugned in the present Regular Second Appeal is the judgment and decree dated 28.5.2009 passed by learned Additional District Judge (Adhoc) Fast Track Court, Sangrur, affirming the judgment and decree dated 3.2.1998, passed by learned Civil Judge (Senior Division), Sangrur, vide which, counter claim filed by the defendants was allowed and plaintiffs, defendants and Balbir Kaur daughter of Bhola Singh were declared owners in possession of land in dispute to the extent of 7/48th share each. Mutation of inheritance bearing No.2260 dated 13.12.2971 was declared illegal.

Facts of the case are that Bhola Singh was the original owner of the land. He died leaving behind three sons, namely, Gurdial Singh, Gurdev Singh and Ajaib Singh and three daughters namely Baldev Kaur, Mohinder Kaur and Surjit Kaur. Ajaib Singh who was unmarried and issueless

also died. Plaintiffs filed a suit for declaration and permanent injunction, claiming that suit property was ancestral property and that there was a family settlement and suit land has fallen to the share of the plaintiffs in equas shares. Defendants also made counter claim claiming that Bhola Singh expired on 18.10.1971 and that they are entitled to 1/8th share each to the estate of Bhola Singh on the basis of the natural succession. It was stated that Ajaib Singh had expired on 26.9.1982 and 1/8th share of Ajaib Singh will be inherited by the parties and the share of all the parties comes to 7/16th share each. However, in the revenue record, defendants are shown to be owners of 1/6th only, which is incorrect. They also challenged the mutation No.2260 dated 13.12.1971.

It comes out that suit of the plaintiff was dismissed under Section 35-B vide order dated 7.5.1995. However, counter claim was tried by the trial Court and was allowed. In the appeal, the judgment of the trial Court was upheld. It also comes out that in the appeal, order dismissing the suit under Section 35-B was not challenged.

I have heard learned counsel for both the parties and have also carefully gone through the file.

I am of the view that relationship between the parties is not denied. The plaintiffs claim that suit property was ancestral and that there was a family settlement in which they got the property. However, on account of dismissal of their suit under Section 35-B, they could not prove the said assertion. Natural result will be that suit property will go by the natural succession which has been done by the Court below. There is no illegality or infirmity in the findings recorded by both the Courts below.

It being so, there is no force in the present regular second

appeal. Same is accordingly dismissed.

Since the main case has been dismissed, therefore, the pending
CM, if any, also stands disposed of.

03.05.2018
gk

(Kuldip Singh)
Judge

Whether speaking/ reasoned:	Yes
Whether Reportable:	No