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

RSA No.2673 of 2016 (O&M)
Date of Decision.30.10.2018

Ashok Kumar .....Appellant

Vs

Kailash and others ...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Aayush Gupta, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

The appellant-plaintiff had not been successful in both the Courts below in laying challenge to the registered Will dated 19.09.2005 executed by his father Jaswant Rai in favour of defendants No.1 to 4, his brothers.

The aforementioned suit was filed on the premise that the property at the hands of Jaswant Rai was ancestral as he inherited the same from Tola Ram and Tola Ram from Jaman Ram and therefore, could not have parted with, except for legal necessity. The legal necessity has not been referred to in the registered Will and therefore, exclusive inheritance of defendants No.1 to 4 by excluding the plaintiff was not legal in law.

Defendants contested the suit by supporting the act of the testator, Jaswant Rai and exclusion of the plaintiff as there was long drawn litigation between them.

Mr. Aayush Gupta, learned counsel appearing for the appellant submitted that nature and character of the property being

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ancestral has been proved through the original excerpt Ex.P2, which shows inheritance from great grandfathers and the plaintiff being 4th generation in lineage was entitled to the property. The alleged Will did not reveal any act of disinheritance for legal necessity and therefore, was liable to be ignored and the suit property was to devolve as per the natural succession. There was an acknowledgment of the nature and character of the property being ancestral. In suit, Ex.P5 filed by Jaswant Rai against Tola Ram vide which he acquired the right in the property, Patwari, who brought the original excerpt, testified in the same lines, therefore, there is abdication and perversity.

I am afraid aforementioned arguments of Mr. Gupta are not able to cut ice, for, on perusal of the record of the Courts below particularly Ex.P5 except Rect. No.12/23(8-0), 25/3 (8-0), all other rectangles are different properties. Excerpt Ex.P2 does not show nature of the property except the pedigree. It was incumbent upon the plaintiff to connect the property placing on record jamabandi for the year 1955-56 in favour of great grandfather Jaman Ram and then Tola Ram and so on and so forth. Unless and until the property is not connected, a person cannot lay claim by birth. The factum of long drawn litigation between the plaintiff and his father Jaswant Rai as reflected in the Will had not been rebutted through direct and cogent evidence, thus, action of the testator could not have been tested.

I do not find any illegality and perversity in the judgments and decrees passed by the Courts below, much less, no substantial question of law arises for determination. No ground for

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interference is made out.

Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

October 30, 2018
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No

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