

RSA No.1276 of 2015 (O&M)

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

**RSA No.1276 of 2015 (O&M)
Date of decision:30.10.2018**

Amarjit Kaur

... Appellant

Vs.

Bhim Singh and others

... Respondents

RSA No.1277 of 2015 (O&M)

Amarjit Kaur

... Appellant

Vs.

Bhim Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. H.S.Dhandi, Advocate
for the appellant.

Mr. Vikas Mehsempuri, Advocate
for the respondents.

AMIT RAWAL J. (Oral)

Appellant-defendant No.1 is aggrieved against the judgment and decree of the Lower Appellate Court, whereby, suit of the respondent-plaintiff dismissed by the trial Court, has been decreed.

The respondent-plaintiff instituted the suit claiming ownership in respect of the land measuring 9 bighas 8 biswas on account of the Will dated 23.03.2004 executed by Darshan Singh son of Pritam Singh, who died on 02.05.2004. Along with the declaration, injunction qua forcible interference was sought.

The aforementioned suit was contested by the appellant-defendant on the ground that Darshan Singh did not execute any Will thus could not be looked into being un-registered. The appellant/defendant-Amarjit Kaur claimed herself to be wife of Darshan Singh.

On the preponderance of evidence, the trial Court dismissed the suit by holding that the Will did not mention about the fact that appellant-defendant No.1-Amarjit Kaur claiming herself to be wife was living with one Jagdev Singh. The Lower Appellate Court reversed the findings of the trial Court by upholding the Will propounded by the respondent-plaintiff and discarded the additional evidence sought to be placed on record to be not relevant for adjudication of the lis.

Mr. H.S.Dhandi, learned counsel appearing on behalf of the appellant submitted that earlier to the decision, the appellant approached this Court and challenged the order of the Lower Appellate Court as the application under Order 41 Rule 27 of Code of Civil Procedure remained undecided but fate of the appeal, after remand, remained same, for, the reason assigned for discarding the application for additional evidence is wholly erroneous and un-sustainable. The documents sought to be placed on record, i.e. voter card, ration card etc. lead to irresistible conclusion that appellant was wife of Darshan Singh. The plaintiff examined only one marginal witness PW1-Chamkaur Singh qua Will. The other witnesses or scribe have not been examined, thus, Will was required to be discarded and the estate of Darshan Singh should have devolved as per natural succession.

Per contra, Mr. Vikas Mehsempuri, learned counsel appearing on behalf of the respondents supported the findings rendered by the Lower Appellate Court being the last Court of facts and law, for, defendants have not been able to belie the signatures of Darshan Singh. Amarjit Kaur was living with Jagdev Singh which fact has been proved on record from a copy of the petition filed under Section 9 of Hindu Marriage Act. Even the additional documents placed on record do not conform to the touchstone of genuineness as the date of birth of Bikramjit Singh (son) shown to be of July 1984, whereas, ration card issued in 2001 showed the age to be 7 years. All the documents are self-serving and thus, urged this Court for dismissal of the appeals by upholding the impugned judgment and decree.

I have heard the learned counsel for the parties, appraised the judgments and decrees as well as record of both the Courts below and of the view that there is no force and merit in the submissions of Mr. Dhandi.

Section 50 of the Indian Evidence Act, 1872 enables the party to lead evidence *vis-a-vis* proof of relationship. For the sake of convenience, Section 50 read as under:-

“50. Opinion on relationship, when relevant.—When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, or any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact: Provided that such opinion shall not

be sufficient to prove a marriage in proceedings under the Indian Divorce Act, 1869 (4 of 1869) or in prosecutions under section 494, 495, 497 or 498 of the Indian Penal Code (45 of 1860).”

Except the bald statement of defendant, no other evidence in this regard has been placed on record. The appellant has miserably failed to discharge the onus, therefore, the question of rebuttal did not arise.

Assuming for an argument sake, the appellant was a wife of Darshan Singh, though not proved and the contents of the Will, much less signatures had not been discarded, it was incumbent upon the appellant to examine the witness or expert to belie the signatures. There is a categorical recital in the Will that some lady from poor family had been living with testator Darshan Singh. Such recital would not confer the status of wife.

The scope of the additional evidence has also not been in dispute provided that the same has substance and goes to the root of the matter. All the documents have been issued on the basis of self-serving statement.

In my view, the appellant has miserably failed to establish the status of wife of Darshan Singh to claim any right of inheritance. On the contrary, the petition filed under Section 9 of Hindu Marriage Act revealed that she was living as wife of other person. All these facts weighed in the mind of the Lower Appellate Court while reversing the judgment and decree of the trial Court. Thus, arguments of Mr. Dhandi, do not able to bring the

cases within the realm of illegality and perversity.

No substantial question of law arises for adjudication of the present appeals.

The appeals stand dismissed.

October 30, 2018

savita

(AMIT RAWAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No