

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

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**RSA No.1379 of 2015 (O&M)
Date of Decision : 26.10.2018**

Devi Ram (since deceased) through
his LRs

..... Appellants

Vs.

Pavi and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present: Ms. Geeta Singhwal, Advocate
for the appellants.

AJAY TEWARI, J. (Oral)

This appeal has been filed against the concurrent judgments of the Courts below dismissing a suit filed by the appellants.

The claim of the appellants as set out in the plaint was that their uncle Mauji Ram had died issueless and they had ultimately inherited his property along with other collaterals. They challenged the mutation which had been executed in favour of respondent No.1 on these grounds. The case of respondent No.1 on the other hand was that Mauji Ram was married to Mano Devi and she was their daughter. In the replication the appellants accepted that Mauji Ram was married to Mano Devi but took the stand that 13 days after death of Mauji Ram Mano Devi had developed intimacy with one Ishwar Singh Saini S/o Shibhan and respondent No.1 was actually a result of that liaison. They further relied on the date of birth of respondent No.1 recorded in her school certificate

to assert that Mauji Ram had died in the year 1979 while respondent No.1 was shown to have been born in January, 1981 therefore, she could not be his daughter. During the evidence, witness of respondent No.1 (including her mother Mano Devi) testified that she was actually the daughter of Mauji Ram and that the date of birth was wrongly entered. They also brought DNA proof to show that respondent No.1 was not the daughter of Ishwar Singh. The Courts below (and in my opinion) rightly held that by completely omitting to mention the widow of Mauji Ram in the plaint the appellants had not come to the Court with clean hands and they had set up a new case in the replication. They also noticed that once it was a specific case of the appellants that respondent No.1 was the daughter of Ishwar Singh and that was conclusively disproved, the preponderance of probability would fall in favour of respondent No.1.

Learned counsel has vehemently argued that the date of birth as recorded in the school certificate could not have been ignored in this case. No doubt the date of birth is an important indication but it can not be said to be conclusive especially in a case of this nature. Once it was the case of the appellants that respondent No.1 was the daughter of Ishwar Singh and that was not proved then the other testimony could be held to outweigh the date of birth.

Counsel has not been able to show how these findings are so perverse or based on no evidence as to render them liable for interference in second appeal.

Appeal stands dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

26.10.2018

pooja sharma-I

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No