

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

**RSA No.2046 of 2015 (O&M)
Date of Decision.15.11.2018**

Balwan Singh and others

...Appellants

Vs

Satbir and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ramender Chauhan, Advocate
for the appellants.

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AMIT RAWAL J. (ORAL)

The appellants-plaintiffs have not been successful in claiming possession in respect of plot No.259 measuring 2 kanals on the basis of registered Will dated 17.01.1984 executed by Sheo Chand.

The case set up in the plaint was that Udmi had three sons; Parsa, Ranjeet and Sheo Chand. Ranjeet had one son Tara Chand. Plaintiffs are sons of Tara Chand whereas defendants are also sons of Tara Chand, out of second marriage. It was alleged that on demise of Sheo Chand in the year 1991, his entire property was mutated except the plot in question. On having approached the defendants for handing over possession, they assured of allotting/handing over of another plot but the assurance kept on lingering and ultimately, the suit was filed on 3.1.2008.

The defendants opposed the suit that the plaintiffs had full knowledge with regard to plot in question, much less, construction raised thereon. Execution of the Will in favour of plaintiffs was an illegal act as Sheo Chand was residing with the

defendants before the death of Udmi. It was alleged that during the life time of Sheo Chand, partition had taken place amongst the plaintiffs and defendants and for this reason, they did not assert right to the plot in question.

On preponderance of the evidence, trial Court dismissed the suit. The appeal taken before the lower Appellate Court had also been dismissed.

Learned counsel appearing on behalf of the appellants-plaintiffs submitted that the registered Will has not been denied specifically, therefore, deemed to have been admitted. The witness of the Will, who was official from the office of Sub Registrar, has been examined. The defendants also did not dispute the mutation of all other property of Sheo Chand except the plot in question. There is other litigation with regard to estate of Udmi and Will of Tara Chand wherein defendants were not successful, thus, urges this Court for setting aside the finding under challenge.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit in the submissions of counsel representing the appellants, for, plaintiffs have miserably failed to prove the Will by discharging onus as per the provisions of Sections 68 & 69 of the Indian Evidence Act as well as Section 63 (c) of the Indian Succession Act. The factum of partition has also not been disputed or denied, much less, no explanation has come forward as to why action for asserting right in the property was not taken on demise of Sheo Chand in 1991 and accrual of cause of action in 2008 when the suit was filed. Concededly, aforementioned

property was earlier plot and thereafter construction was also raised, which was in the knowledge of the plaintiffs.

All these factors weighed in the mind of Courts below, which, in my view, the correct decision and does not call for interference as there is no illegality and perversity. No substantial question of law arises for determination by this Court, much less, no ground for interference is made out.

Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

November 15, 2018

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No