

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

**RSA No.2047 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 preferred appeal against the concurrent finding of fact whereby the plaintiffs have not been successful in seeking declaration of ownership and possession of 3/9th share of the suit property as described in the head note of plaint by challenging the Will dated 3.1.1997 and mutation bearing No.2254 dated 6.12.1997 of Tara Chand son of Ranjeeet Singh.

The claim in the aforementioned suit was laid on the premise that property at the hands of Tara Chand was ancestral and therefore, he could not have alienated the property by Will except for legal necessity. The beneficiaries of the Will were none else but his sons from the second wife. Deviation from the line of succession *vis-a-vis* plaintiffs was also conspicuously absent. On assurance by the defendants, plaintiffs did not assert right to the suit property but when the perpetual requests yielded no result, suit was filed on 10.01.2008.

The defendants opposed the suit and propounded the Will dated 03.01.1997 and raised the plea of estoppel, much less, acquiescence. In support of pleadings, plaintiff examined himself as

PW1 and PW2 Raj Kumar and tendered jamabandi Ex.P3.

On the other hand, defendants examined Om Parkash deed writer as DW3, Sumer Chand, Advocate as DW4 in order to prove the Will and Shree Bhagwan as DW1.

The trial Court on the basis of evidence dismissed the suit. Plaintiffs were not successful before the lower Appellate Court as well.

Learned counsel appearing on behalf of the appellants submitted that character and nature of the suit property as ancestral had been proved through the testimony of DW1 Shree Bhagwan. Admission was sufficient piece of evidence for the Courts below to discard the Will as execution of the Will did not reveal any legal necessity. Tara Chand inherited property from Ranjeet Singh, who from Udmi and the plaintiffs being 4th generation in lineage had right by birth.

I am afraid aforementioned argument of learned counsel for the appellant is not sustainable, for, onus as enshrined under Section 101 of the Indian Evidence Act has not been discharged in order to substantiate the claim with regard to nature and character of the property as ancestral. Requirement of revenue excerpt as noticed by this Court in **Banta Singh and others Vs. Phuman Singh and others 1971 PLR 1042** has not been complied with nor any pedigree table seen light of the day. On the other hand, defendants have been successful in proving execution and attestation of the Will. Despite extensive cross-examination, scribe and witness of the Will had been coherent.

In view of the aforementioned facts, arguments of counsel representing appellants have not been able to bring the case within the realm of illegality and perversity, much less, no substantial question of law arises for determination by this Court. 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