

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

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**RSA-3488-2016 (O&M)
Date of Decision : 07.09.2018**

Rajbala Appellant

Versus

Vidhya Devi (now deceased) through LR and others Respondents

**CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present :- Mr. Vikas Mohan Gupta, Advocate
for the appellant.

AJAY TEWARI, J. (ORAL)

This appeal has been filed against the concurrent judgments of the courts below decreeing a suit filed by the respondent No.1.

The dispute relates to the property of Gopi Ram. Gopi Ram left behind a mother, widow and two sons and died on 12.06.2007. Significantly his widow and two sons applied for a mutation of his property in their name and in support of the application an affidavit was filed in which it was stated that apart from the widow and two sons, there was no other legal representative of Gopi Ram (thereby denying the very existence of the respondent No.1-the mother). The mutation was sanctioned on the basis of the said affidavit on 09.08.2007. On 04.09.2007 i.e. within less than a month, the respondent No.1 filed the instant suit and on the very next day i.e. 05.09.2007 the property was sold to the appellant by respondents No.2 to 4.

The case of the appellant and the respondents No.2 to 4 was that in fact Gopi Ram had left behind an unregistered Will dated 06.04.2007. In that Will he had bequeathed his entire property to his wife and two sons to the exclusion to his mother (respondent No.1) and it was on the strength of that Will that the respondents No.2 to 4 had become the owners and validly sold the property to the appellant. The courts below having decreed the suit the appellant is before this Court.

Counsel for the appellant has argued that the courts below erred in rejecting the Will. As per him, the respondent No.1 had admitted in her cross-examination that Gopi Ram had executed a Will. He has further pointed out that she had also accepted that at the time of the death of Gopi Ram, the property was mortgaged with the bank. She had also accepted that the sons of Gopi Ram had repaid the amount and redeemed the property. Counsel has further stated that it has come on the record that the sons of Gopi Ram had obtained the amount to be repaid to the bank from the appellant and that was partly the reason that they sold the property to her. He has further pointed out that the respondent No.1 had admitted that she was staying with her son Hari Pal and that Hari Pal had serious disputes with the husband of the appellant. As per the counsel, this suit had been filed at the behest of Hari Pal. He has further argued that the courts below erred in glossing over these salient facts.

A perusal of the judgments of the courts below reveals that the major fact which persuaded the courts to hold against the Will was that if the respondent Nos.2 to 4 had inherited the property by virtue of the Will, they would have brought it before the revenue authority and would not have got the mutation sanctioned by representing that they

were the only heirs of Gopi Ram by denying the very existence of the mother. The courts below also noticed that even in the sale deed which was executed by respondents No.2 to 4 the Will was not mentioned. To my mind also, this is the real determinant. It is trite to say that men may lie but circumstances don't. There is no explanation even before me why the respondents No.2 to 4 did not propound the Will at the time of the mutation. Had they propound the Will, notice would have gone to the respondent No.1 and she would have been able to bring forth her case before the revenue authorities.

In the totality of circumstances, I am not persuaded that the findings recorded by the courts below are either based on no evidence or based on such a perverse misreading of evidence so as to justify interference of this Court in second appeal.

Appeal is dismissed. No costs.

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

September 07, 2018
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(AJAY TEWARI)
JUDGE

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No