

RSA No.3499 of 2016
DATE OF DECISION:13.11.2018

Vinod Kumar & others

...Appellants

 V_S

Smt. Mallo (@ Maluki & others

...Respondents

CORAM:- HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Rajesh Lamba, Advocate
for the appellants.

AMIT RAWAL, J.(ORAL)

CM No.9169-C of 2016

This application has been moved for impleading LRs of deceased-appellant No.2-Dharambir, who has expired on 25.09.2015. The LRs are mentioned in para No.3 of the application which has duly been supported by an affidavit.

For the reasons recorded in the application, the same is allowed, subject to all just exceptions. The LRs as mentioned in para No.3 of the application are brought on record. Amended memo of parties annexed with the application is taken on record.

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The appellant-plaintiff had not been successful in laying challenge to the sale deeds executed by maternal uncle with regard to the suit property

where the mother of the plaintiff had been ousted. Claim was based on the premise that Mallo Devi died on 29.06.2007. Despite Plaintiffs being the legal heirs, the defendants attempted to grab the share of the Mallo Devi fraudulently executed a sale deed in favour of defendant No.5 on 11.12.2007 which included the share of the plaintiffs.

Defendants No.2 to 4 opposed the suit and denied the death of Mallo Devi to be in June, 2007 but on 29.12.2007 i.e. after execution of the sale deed. Defendant no.5 reiterated the stand taken in the written statement filed on behalf of respondents No.2 to 4.

Plaintiffs examined three witnesses and brought on record nine documents. P-4 is death certificate of Mallo Devi showing the death to be on 29.06.2007.

The trial court dismissed the suit by taking into consideration Ex-D-1 death certificate dated 29.12.2007.

Mr. Rajesh Lamba, learned counsel appearing on behalf of the appellant/plaintiffs submitted that once it has been proved on record that Mallo Devi died in June 2007, sale deed of 11.12.2007 in favour of the defendants qua the share of the plaintiff's mother was illegal. Defendants have not been able to prove the death certificate as Ex D-1.

I am afraid, aforementioned arguments is not sustainable as no witness from concerned department has been examined. Thus her death on 29.12.2007 but not on 26.06.2007 has correctly been inferred in the absence of any cogent evidence.

For the aforementioned reasons, I do not find any illegality and perversity in the judgments and decrees of both the Courts below which are

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based upon appreciation of oral and documentary evidence much less no
substantial question of law arises for adjudication of the present appeal.

Dismissed.

13.11.2018
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(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No