

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

RSA No.3887 of 2016 (O&M)

Date of decision:16.05.2018

Dewan Singh

... Appellant

Vs.

Gurdeep Kaur and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Anil Chawla, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.10058-C of 2016

For the reasons stated in the application which is duly supported by an affidavit, delay of 19 days in re-filing the appeal is condoned.

C.M. stands disposed of.

RSA No.3887 of 2016 (O&M)

The appellant-plaintiff is aggrieved of the dismissal of the suit claiming declaration and co-ownership alongwith defendants on the premise that transfer deed dated 10.12.2012 executed by Gurdeep Kaur/defendant No.1 (mother of appellant) qua land measuring 72 kanals being ancestral property in favour of defendant No.3/Balbir Singh, therefore, she could not alienate the property except for legal necessity.

Mr. Anil Chawla, learned counsel appearing on behalf of the

appellant-plaintiff submits that the aforementioned suit was filed on the premise that Gurdeep Kaur got the property from Dharam Singh by virtue of Will, therefore, she could not alienate the property. The defendants came out with a plea that Gurdeep Kaur had executed a Will dated 28.06.2004 in favour of one of her sons, namely, Balbir Singh, for, she was absolute owner of the property and could deal with the property in any manner.

The Courts below ignored the aforementioned fact that the property at the hands of Dharam Singh was ancestral and therefore, nature of the property would remain the same. If it devolved upon Gurdeep Kaur, she could not have alienated the same by way of sale deed or Will in favour of one of her sons, i.e., defendant No.3, for, Gurdeep Kaur and Dharam Singh had three sons namely, Dewan Singh/appellant, Pargat Singh predeceased son and Balbir Singh/defendant No.3. Pooran Kaur widow of Pargat Singh was also arrayed as defendant No.2 in the suit, therefore, there is gross illegality and perversity in the findings under challenge.

I have heard the learned counsel for the appellant-plaintiff, appraised the judgments and decrees of the Courts below and of the view that there is no force and merit in the submissions of Mr. Chawla, for, it has not been established that property at the hands of Dharam Singh was ancestral. No documentary evidence has been placed on record to prove the same. Even otherwise, on acquisition of the property at the hands of Gurdeep Kaur on demise of Dharam Singh, she was absolute owner of the property as per the provisions of Section 14(1) of Hindu Succession Act, therefore, she could deal with the property in any manner she wanted to.

The transfer deed dated 10.12.2012 executed by Gurdeep Kaur in favour of defendant No.3/Balbir Singh in respect of land measuring 72 kanals had also been proved on record. No evidence has come on record when she died and therefore, the sale deed was executed during her life time, thus, the Will in favour of Balbir Singh had become immaterial until and unless, it was in respect of other property than the one already transferred, *ibid*. I am of the view that plaintiff has miserably failed to discharge the onus as per the provisions of Section 101 of the Indian Evidence Act and rightly so, the suit has been dismissed by the trial Court and upheld by the Lower Appellate Court.

As an upshot of my findings, I do not find any illegality and perversity in the judgments and decrees of the Courts below which are based upon the appreciation of oral and documentary evidence, much less no substantial question of law arises for adjudication of the present appeal.

No other argument has been raised.

Accordingly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

May 16, 2018
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No