

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

**RSA No.4674 of 2016 (O&M)
Date of Decision.21.11.2018**

Prem ChandAppellant
Vs

Raj Pal ...Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Anuj Balian, Advocate
for the appellant.

-:-

AMIT RAWAL J. (ORAL)

C.M. No.12080-C of 2016

For the reasons stated in the application, delay of 24 days
in filing the appeal is condoned.

Application is allowed.

RSA No.4674 of 2016

The appellant-defendant has not been successful in
defending the suit for declaration filed by the plaintiff in respect of
land measuring 2 bighas 3 biswas (hereinafter called the “suit
property”). It was alleged that one Beeru had three sons namely
Nikku, Matu, Santu and daughters Krishni and Santo. Matu died
issueless. He had executed a Will in favour of Krishni and her son
Prem Chand, defendant No.1 and therefore, in these circumstances,
Krishni and Prem Chand inherited the share of Matu. Chetu son of
Santu filed the suit challenging the alleged Will. The
aforementioned suit was dismissed as withdrawn owing to the
compromise wherein defendants No.1 and his mother Krishni agreed
to give 2 bighas 3 biswas of land. Chetu executed a Will dated

28.03.1995 in favour of plaintiff, Rajpal, who was a relative and in these circumstances, plaintiff claimed ownership over the suit property.

The defendants opposed the suit on various grounds regarding maintainability. In the absence of any title, could not accord title to Chetu nor Chetu could have bequeathed the property by way of Will in favour of plaintiff. The suit was hit by the provisions of Order 23 Rule 3-A CPC. The compromise was *in presenti* and therefore, required registration. In support of the aforementioned submission, reliance has been made to the judgment rendered by this Court in **Umrao Singh Vs. Nikku Mal Gupta 1965 PLR 176.**

I am afraid aforementioned argument of Mr. Balian is not sustainable, as defendants in the written statement categorically admitted the compromise arrived at in suit filed by Chetu was for 2 bighas 3 biswas of land. By taking up the plea of Will, cannot wriggle out of the compromise and therefore, opposition of the present suit was nothing but a dishonest approach. The plaintiff was not part of the compromise, therefore, provisions of Order 23 Rule 3-A CPC would not apply. Even there is a specific mention in the compromise (Ex.P6) in earlier round of litigation that the defendant (Prem Chand) will be at liberty to obtain the mutation in the name of the plaintiff (Chetu). In these circumstances, Krishni and Prem-defendant No.1 cannot usurp the land measuring 2 bighas 3 biswas agreed to be given to Chetu as per her entitlement.

All these factors weighed in the mind of the Courts

below in rendering concurrent finding of fact, which in my view, does not suffer from any 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 21, 2018

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No