

**C.M.No.7311-C of 2018 in/and
RSA No.5098 of 2016 (O&M)**

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

**C.M.No.7311-C of 2018 in/and
RSA No.5098 of 2016 (O&M)
Date of decision:09.05.2018**

Paramjit Kaur

... Appellant

Vs.

Bharpur Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Mayank Mathur, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.7311-C of 2018

For the reasons stated in the application which is duly supported by an affidavit, order dated 23.03.2018 is recalled and the appeal is restored to its original number.

C.M. stands allowed.

RSA No.5098 of 2016 (O&M)

The appellant-plaintiff is in Regular Second Appeal against the concurrent findings of facts and law, whereby, suit claiming declaration to the effect that plaintiff and defendants were the joint owners to the extent of 1/6th share in suit land on the basis of natural succession by ignoring the Will dated 19.05.2003 allegedly executed by Chajju Singh, her father being

illegal, null and void and not binding upon rights and restraining the defendants from alienating, transferring, mortgaging or disposing of 1/6th share of the plaintiff in the suit land, has been dismissed by the trial Court and affirmed by the Lower Appellate Court.

The appellant-plaintiff instituted the aforementioned suit on the premise that Chajju Singh died intestate on 15.3.2010 and therefore, by way of natural succession being daughter had 1/5th share in the suit land but the defendants illegally in connivance with the revenue officials got sanctioned mutation no.2258 on the basis of aforementioned Will. The alleged mutation and Will were liable to be set aside.

The defendants contested the suit. It was stated that Chajju Singh during his life time executed a registered Will dated 19.5.2003 in sound and disposing mind which was in the knowledge of the plaintiff but she did not stake any claim and only came forward on the demise of Chajju Singh as the suit was filed on 23.02.2011.

Since both the parties were at variance, the trial Court framed as many as six issues including the issue of Relief. Both the parties in support of their case examined the witnesses. Both the Courts below on the basis of testimony of attesting witnesses found that Will had been proved in accordance with law and dismissed the suit.

Mr. Mayank Mathur, learned counsel appearing on behalf of the appellant-plaintiff submits that Will was surrounded by suspicious circumstances, therefore, there was no compliance of the provisions of

Section 63(s) of Indian Succession Act, for, recital in the Will was that Chajju Singh, during his life time had given share to appellant-plaintiff while performing the marriage. It is common practice which is always written by the testator but fact of the matter is that defendants could not inherit the property.

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. Mathur, for, it is strange that sister is staking claim against her brothers, who got the property by virtue of Will on demise of Chajju Singh. The Will, as noticed above had been proved through deed writer, attesting witness. The plaintiff has miserably failed to prove that Will was surrounded by suspicious circumstances. No doubt, the onus was upon the propounder of the Will which was discharged by the defendants. No contrary evidence has been led to form a different opinion than the one arrived at by the Courts below. The plaintiff also failed to prove that the property at the hands of Chajju Singh was ancestral, therefore, he could not bequeath the property except for legal necessity.

The arguments of Mr. Mathur, have not been able to bring the case within the realm of illegality and perversity enabling this Court to form different opinion than the one arrived at by the Courts below which are based upon the appreciation of oral and documentary evidence.

No other argument has been raised.

Accordingly, the appeal stands dismissed.

May 09, 2018
savita

(AMIT RAWAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No