

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

**RSA No.5658 of 2016
Date of decision:22.05.2018**

Bhim Sain and another ... Appellants

Vs.

Rajesh and another ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Ms. Deepa Jain, Advocate, for
Mr. Yash Dev Kaushik, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

The appellant-plaintiffs are aggrieved of the concurrent findings of facts and law, whereby, suit claiming declaration, i.e., half share out of a portion measuring 75 square yards forming part of residential house No.2/204, Old Baselwa Colony, Old Faridabad on the basis of the Will dated 10.08.2000, with a consequential relief of permanent injunction restraining the defendants from interfering into peaceful possession, has been dismissed by the trial Court and affirmed by the Lower Appellate Court.

Ms. Deepa Jain, learned counsel appearing on behalf of the appellant-plaintiffs submits that the suit aforementioned was dismissed on the ground that the appellant-plaintiffs were not able to bring on record the original Will dated 10.08.2000 executed by Angad Ram, who was uncle of

plaintiff No.1, by virtue of which the property was bequeathed in favour of plaintiff No.1 and defendant No.1, despite the fact that execution of Will was not disputed by the defendants. In view of the admission of Will, there was no requirement of law for the appellants to prove the contents of the Will by taking the aid of provisions of Section 68 of Indian Evidence Act, therefore, there is gross illegality and perversity in the findings rendered by both the Courts below.

I have heard the learned counsel for the appellant-plaintiffs, appraised the judgments and decrees of the Courts below and of the view that there is no force and merit in the submissions of Ms. Jain, for, simpliciter suit was not for injunction but for declaration. The plaintiffs had sought the declaration to the extent of half share in the suit property on the basis of the Will, ibid executed by Angad Ram, therefore, the Courts below rightly declined the injunction, for, the original Will had not seen the light of day, in fact, it was a photocopy. No permission for leading secondary evidence had been sought, much less attesting witnesses had been examined. It is yet to be decipher whether plaintiffs are entitled to the half share in the suit property or not.

Dehor of the fact that existence of the Will was not denied by the defendants. It is one of the ingredient for proving the secondary evidence but in the absence of availment of aforementioned remedy, the Courts below had no other option but to decline the relief as sought.

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 22, 2018
savita

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