

**218 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA No. 1631 of 2014(O&M)

Date of decision : 23.05.2018

Karamjit Kaur

..... Appellant

versus

Harbans Singh and others

....Respondents

CORAM : HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. C.S.Jattana, Advocate for the appellant.

Mr.D.D.Bansal, Advocate for respondents No.1 to 11 & 16.

Mr.PKS Phoolka, Advocate
for Mr.Chander Mohan, Advocate for respondent No.19.

AMIT RAWAL, J. (Oral)

Appellant-plaintiff is aggrieved of the concurrent finding of fact whereby suit for declaration and possession claiming share in the property of Ajmer Singh by challenging the mutation in favour of the defendant has been dismissed by the trial Court and the appeal preferred against that decision was also dismissed by the Lower Appellate Court.

Appellant-plaintiff instituted the suit in the year 2006 challenging the mutation of the year 1984 on the premise that her father Ajmer Singh died on 18.1.1984 but was not aware of the fact that he had executed a registered Will dated 05.12.1983 in favour of the defendants who were none else but her nephews. He was owner of the land as described in

the head note of the plaint along with his other co-sharers. A fraud had been played upon the plaintiff, for the Will did not assign any reason of deviation from the natural succession. Mere registration of will would not be sufficient.

Mr.C.S.Jattana, learned counsel appearing for the appellant-plaintiff submits that the respondent-defendants failed to prove the will being propounded as neither any attesting witness had been there nor there is compliance of the provisions of Section 63 of the Indian Succession Act. Even the Sub Registrar who had been examined, deposed that he did not know about the testator. The finding of the Courts below with regard to the factum of having ignored the mutation of 15.06.1984 is neither here nor there, for it has been written as Guddi whereas the name of the appellant is Karamjit Kaur alias Guddi. All these factors have not been taken care of by the Courts below and urged for setting aside the impugned judgments and decrees of the Courts below.

Per contra ,Mr. D.D.Bansal, learned counsel appearing on behalf of respondents No. 1 to 11 and 16 and Mr.PKS Phoolka, learned counsel appearing for respondent No.19 submitted that concurrent finding of fact cannot be interfered with because there is no gross illegality and perversity. The Sub Registrar who had been examined as DW4 deposed that he had read over and explained the Will to Ajmer Singh and after understanding the same the latter appended his thumb impressions thereon. Therefore, there was sufficient compliance of the provisions of Section 68 of the Indian Evidence Act. In support of his contention he has relied upon a decision of the Hon'ble Supreme Court in case **Ved Mitra Verma v.**

Dharam Deo Verma, 2014(15) SCC 578 and urged this Court for dismissal

of the appeal.

I have heard learned counsel for the parties and perused the record and am of the view that there is no force and merit in the submissions of Mr.Jattana, for concededly the mutation was effected on the demise of Ajmer Singh on the basis of Will which was executed on 15.06.1984 in the presence of attesting witnesses. No explanation has come forth for filing the suit at a highly belated stage and thus the same was hit by Law of Acquiescence. The Sub Registrar had also proved the registration of the Will. It is settled law that where two witnesses are not available the examination of Registrar is sufficient compliance of the provisions of Section 68 of the Indian Evidence Act and this view is fortified from the view taken by the Hon'ble Supreme Court in para 7 of the judgment in case of Ved Mitra Vverma(supra) which reads as follows:-

“The exclusion of the other children of the Testator and the execution of the Will for the sole benefit of one of the sons i.e. the Respondent, by itself, is not a suspicious circumstance. The property being self acquired it is the Will of the Testator that has to prevail. Therefore, the question as to whether the Will is a genuine and acceptable document will depend on a consideration of the other circumstances surrounding its execution.”

Learned counsel for the appellant has not been able to bring the same within the realm of perversity thus no different opinion can be formed to that formed by the Courts below.

No substantial question arises in this appeal and the same is dismissed.

(AMIT RAWAL)
JUDGE

23.05.2018
sunita

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No