

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

RSA No. 5839 of 2016

Date of decision: 30.11.2018

Mohinder Singh (since died) represented through Lrs.

...Appellant(s)

Vs.

Harcharan Kaur & Another

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. B.S. Jaswal, Advocate
for the appellant(s).

Mr. Prateek Sodhi, Advocate
for LR's of appellant No. 1.

AMIT RAWAL, J.(ORAL)

The present Regular Second Appeal is directed against the concurrent finding of the Courts below whereby the suit filed by the respondent-plaintiff sister of the appellant-defendant claiming 1/6 share in the property of his father has been decreed.

Mr. Jaswal learned counsel appearing for the appellants submitted that Bahadur Singh was owner of the land but before his demise on 18.02.1988, had executed a Will on 05.02.1988 bequeathing the property in favour of the sons. Mutation dated 18.05.1989 Exhibit D-5, was sanctioned in the presence of the plaintiff. The suit had been filed in the year 2010 which was as per the provisions of Article 58 barred by law of limitation. Both the courts below have non suited the appellant on the ground of non-production of the original Will which resulted into consequential entry of mutation Exhibit D-5 but have not taken into consideration

the order dated 18.05.1989 sanctioning mutation in favour of the defendants. Even the appellate Court has also failed to appreciate this fact and, therefore, there is illegality and perversity in the judgments and decrees passed by Courts below.

I have heard learned counsel for the appellants and I am of the considered view that there is no force and merit. Exhibit D-5 do not reflect the signatures of the respondent-plaintiff. Mere mentioning of the presence would not prove that she was actually present. In the absence of the original Will and denial of signatures of Bahadur Singh, the same cannot be relied upon. Examination of expert by comparing the photocopy with the original signatures on sale deed dated 16.02.1962 is also of no consequence. Thus, no ground is made out for interfering in the concurrent finding of the fact recorded by the Courts below.

In view of above, the present appeal is dismissed.

November 30, 2018

Poonam (II)

**(AMIT RAWAL)
JUDGE**

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| 1. | Whether reportable? | Yes / No |
| 2. | Whether reasoned / speaking? | Yes / No |