

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

RSA No.4776 of 2015

Date of Decision : 16.05.2018

Rajwinder Singh and another

.....Appellants

Versus

Harjit Kaur and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. M.K.Dogra, Advocate for the appellants.

ARUN PALLI, J. (Oral)

Suit filed by the respondent/plaintiff was decreed by the trial Court vide judgment and decree dated 4.4.2014. As even the appeal preferred against the said decree failed and was dismissed on 20.04.2015, the Appellants/defendants No.1 and 2, are before this Court in this Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

The plaintiff prayed for a decree for joint possession of a land measuring 13 kanals 18 marlas i.e. 11 kanals 10 marlas being 1/8 share in a land measuring 91 kanals 19 marlas, and 2 kanals 8 marlas, being 1/6 share in a land measuring 14 kanal 18 marlas, as depicted in the cause title of the plaint.

On a consideration of the matter in issue and the evidence on

record both the Courts concurrently concluded that originally the suit land was owned by Santokh Singh son of Banta Singh, who happened to be the father of the plaintiff and defendant No.1. The plaintiff claimed a share in the estate of her deceased father, whereas defendants No.1 and 2, set up a will dated 02.08.2002 (Ex.DW1/A), alleged to have been executed by late Santokh Singh in favour of defendant No.2, who happens to be son of defendant No.1. And to prove the due and valid execution of the will, the defendants examined Joginder Singh, Deed Writer, who place on record a certified copy of the will Ex.DW1/A. But despite numerous opportunities, neither did the defendants examine any of the two attesting witnesses nor proved their signature upon the will dated 02.08.2002. Thus, the defendants failed to comply with the requirement of Section 68 of the Indian Evidence Act. Even though, the alleged will was registered, but in the given situation that too was inconsequential. Not just that even the witness examined by the defendants conceded in their testimony that they had never seen the original will purportedly executed by late Santokh Singh. So much so, Joginder Singh (DW1), conceded in his statement that the original will was never produced even in the revenue proceedings, and they never even lodged a report regarding it's loss. The burden of proof to prove the will was upon the defendants, which they apparently failed to discharge. On the contrary, plaintiff succeeded to prove that she was one of the co-sharer in the suit property.

On being pointedly asked, learned counsel for the appellants could not refer to anything on the record to show if the conclusion arrived at by both the Courts were either contrary to the record or suffered from any material illegality.

No question of law, much less any substantial question of law, arises for consideration. The appeal being devoid of merit is accordingly, dismissed.

16.05.2018

Manoj Bhutani

(ARUN PALLI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No