

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

RSA No.4904 of 2015 (O&M)

Date of decision:12.11.2018

Maghar Singh

... Appellant

Vs.

Balbir Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Paramjit Batta, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

The appellant-plaintiff has not been successful in claiming the declaration, partition, much less injunction in respect of the suit property on the basis of un-registered Will dated 10.05.2000 allegedly executed by Sharda Singh, common ancestor.

The plaintiff alleged that he had purchased the suit property in the name of his father, though the entire sale consideration was paid by him. Even expenses of construction was also borne by him. On demise of Sharda Singh, two properties were mutated in his favour and later on, effected on the basis of natural succession which gave a cause of action to institute the suit.

Learned counsel appearing on behalf of the appellant-plaintiff submitted that both the Courts below have abdicated in non-suited the plaintiff despite the fact that Will has been proved through attesting

witnesses, PW4-Gurpal Singh and son of Nambardar, therefore, there was compliance of provisions of Section 68 of Indian Evidence Act. The original Will was in the custody of other defendant, i.e., brother. Despite notice, the same was not produced giving cause to move an application for secondary evidence. The aforementioned application was allowed, unopposed. The other brother had also admitted the fact that Sharda Singh, during his life time, had executed a Will. All these factors lead to irresistible conclusion that Will was actually executed.

I am afraid the aforementioned argument is not sustainable in the eyes of law, for, admitted thumb-impressions of Sharda singh had not been proved. The witnesses may tell lie but the science which has been introduced for comparison of the admitted thumb-impressions with the disputed one has some sanctity. The feeble attempt for claiming the property as benami under the disguise that Sharda Singh being benamdar is not permissible in law. All these factors weighed in the mind of the Courts below to grant the exclusive ownership of the property resultant into passing of a preliminary decree to the extent of 1/3 share over the suit property.

As an upshot of my findings, I do not find any illegality and perversity in the judgments and decrees rendered by both 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.

The appeal is dismissed.

(AMIT RAWAL)
JUDGE

November 12, 2018
savita

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