

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

**RSA No.6441 of 2016 (O&M)
Date of Decision.17.12.2018**

Surender Kumar and others

....Appellants

Vs

Rishi Ram and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sandeep Singh, Advocate
for the appellants.

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AMIT RAWAL J. (ORAL)

C.M. No.16895-C of 2016

For the reasons stated in the application, delay of 40 days
in re-filing of the appeal is condoned.

Application is allowed.

RSA No.6441 of 2016

The appellants-plaintiffs have not been successful in asserting right in the suit claiming declaration by laying challenge to the Will dated 30.12.1969 of Phulla having bequeathed the property in favour of the defendants. It was alleged that Dila Ram was an agriculturist by profession. He had two sons namely Phulla and Inderaj. Phulla was blessed with daughter namely Parsanni Devi. After marriage of Parsanni Devi, one female child namely Lila Devi was born out from the womb of Parsanni Devi and her husband. Lila Devi was married with one Om Parkash and blessed with six children, out of which plaintiffs No.1 to 3 are sons of Lila Devi and plaintiffs No.4 to 6 are the married daughters. Defendants played fraud upon

Phulla while procuring the Will in order to grab the suit land as the same was ancestral property inherited by him from his father Dila Ram. Phulla died on 25.12.1970 and the mutation was also managed by the defendants. Mother of plaintiffs died six months before filing of the suit, therefore, cause of action accrued to lay the claim.

The aforementioned suit was opposed by the defendants and stated that Phulla was the sole surviving owner of property and was competent to execute the Will. Relationship of Lila Devi with Prasanni Devi being daughter of Phulla Ram was emphatically denied.

Both the Courts below did not agree with the appellant-plaintiffs while dismissing the suit.

Mr. Sandeep Singh, learned counsel appearing for the appellants submitted that in order to establish that Lila Devi was related to Parsanni Devi and Parsanni Devi to Phulla, had examined three witnesses namely Shiv Dutt, Birbhan and Randhir Singh, therefore, there was compliance of Section 50 of the Indian Evidence Act.

I am afraid aforementioned argument is not sustainable, for, provisions of Section 50 of the Indian Evidence Act envisages examination of the close of relatives of persons to establish the relationship. Concededly aforementioned witnesses are not relatives. Plaintiffs miserably failed to prove that Phulla was having a daughter Parsanni Devi and Parsanni Devi related to Lila Devi. In such circumstances, they could not seek the claim in the suit property, which was bequeathed in favour of the defendants on the basis of the

registered Will dated 30.12.1969 and mutation No.378 dated 21.03.1973 was also sanctioned on the basis of the same.

In this view of the matter, I do not find any illegality and perversity in the concurrent finding of fact and law arrived at by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

November 17, 2018

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No