

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

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**RSA No.6618 of 2016 (O&M)
Date of Decision : 12.07.2018**

Suresh Kumari and others

..... Appellants

Versus

Jagwant Singh and another

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present :- Mr. Satbir Rathore, Advocate
for the appellants.

AJAY TEWARI, J. (Oral)

This appeal has been filed against the judgment of the lower appellate Court reversing that of the trial Court and dismissing a suit filed by the appellants.

The case of the appellants was that they were originally 4 sisters and 3 brothers. Respondent No.1 had murdered their 3rd brother and consequently they were entitled to inherit 4/5th share of the deceased property. The defendant No.1 in his written statement denied that he had murdered the 3rd brother and stated that all the six siblings of the dead brother had inherited his property in equal share and that he was not dis-entitled from inheriting his share of the deceased property. The FIR was

lodged by the 2nd surviving brother who was the only eye witness. However, in the trial Court he resiled from his statement before the police and consequently respondent No.1 was acquitted. As mentioned above the trial Court decreed the suit but the lower appellate Court reversed the finding and that is how the appellants are before this Court.

Learned counsel has argued that the trial Court had rightly considered all the facts and the evidence and have decreed the suit. It may be mentioned here that no evidence relating to the death of the 3rd brother was led before the trial Court and a perusal of the judgment of the trial Court reveals that it was completely conjectural, because the basis of his judgment was that no brother would lodge a false FIR against another brother. The trial Court did not care to notice that that brother had testified under oath that he had not seen the murderer and that had led to the acquittal of respondent No.1. On the other hand the appellate Court correctly noticed that once respondent No.1 was acquitted and there was no independent evidence the trial Court could not have returned a finding that the death of the 3rd brother was caused by the 2nd brother.

Learned counsel has argued that the appellants had proved on record that 14 days after the acquittal respondent No.1 had given some land to respondent No.2 and this clearly showed the *quid-pro-quo*. In my considered opinion this post facto transaction can not lead to the conclusion that respondent No.1 had caused the death of the 3rd brother.

In the totality of circumstances, I am not able to differ from the view taken by the appellate Court and consequently dismiss the appeals.

Appeal stands dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

12.07.2018
Pooja sharma-I

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No