

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

102

**RSA-5258-2015 (O&M)
Date of Decision : 20.07.2018**

Andhu (since deceased) through LRs and others

..... Appellants

Versus

Smt. Sarjeena and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present :- Mr. Jangvir S. Hooda, Advocate
for the appellants.

AJAY TEWARI, J. (Oral)

This appeal has been filed against the judgment of the appellate court reversing that of the trial court and thereby decreeing a suit filed by the respondents.

The admitted facts are that after the death of Hakmudeen his property was mutated in favour of his mother-respondent No.2. The appellants challenged that mutation which gave rise to a question of title. The District Revenue Officer reversed the mutation. It was at that stage the respondents filed the instant suit claiming that the mutation could not have been changed by the District Revenue Officer. The trial court dismissed the suit holding that if it was the opinion of the respondents that the Revenue Officer could not have changed the mutation they should have filed an appeal in the Revenue Court hierarchy and could not have filed a civil suit. In appeal, the appellate court held otherwise and decreed the suit and that is why the appellants are before this Court.

Counsel for the appellants has argued that the appellate court went beyond the pleadings in going into the question of customary rights among Muslims.

In my considered opinion, the crucial determinant which weighed with the appellate court was that once there was a dispute of title the revenue court could not have decided the same and could have relegated the parties to the civil court.

Counsel for the appellants is not in a position to deny this position in law. Once that is so it is hard to resist the conclusion that the suit was not maintainable and consequently the mere fact that the appellate court went ahead to discuss the applicable law would not render the position illegal. It may also be noticed here that the main thrust on merits which was raised by the appellants was that in Muslim Law women can not inherit and the appellate court held that there is no legal authority for this proposition. Even before me the counsel has not been able to show why and under what law Muslim women can not inherit property. Further, counsel for the appellants has not been able to cite any contrary proposition of law.

Appeal is dismissed. No costs.

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

July 20, 2018
ashish

(AJAY TEWARI)
JUDGE

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