

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

102

**RSA-5736-2015 (O&M)
Date of Decision : 02.08.2018**

Smt. Sunita Rani and another Appellants

Versus

Smt. Shanti Devi Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

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

AJAY TEWARI, J. (ORAL)

This appeal has been filed against the judgments of the courts below dismissing a suit filed by the appellants.

The case of the appellants was that in fact the husband of the appellant No.1 (father of the appellant No.2) had bequeathed his entire estate in their favour by way of Will and the mutation whereby the property was mutated in their names alongwith the respondent (mother of the deceased) was illegal. It is admitted that one of the witnesses of the Will had died but the second one was alive. However, neither the living witness was produced nor any witness who may have been acquainted with the handwriting of dead witness (to prove his signature) was examined. It is stated that after the evidence was over, an application under Order 18 Rule 17-A CPC was filed before the trial court for permission to examine the surviving witness but that application was rejected. The trial court noticed that even the original Will had not been placed on record and dismissed the suit. During the appeal, another

application under order 41 Rule 27 CPC was filed stating that during the trial the original Will could not be traced out despite due diligence but the same had now been located and permission was sought to prove it on record. By the impugned judgment the application as well the appeal have been rejected.

Counsel for the appellants is not in a position to deny that on the date when the first application for additional evidence was filed under Order 18 Rule 17-A CPC it was no longer on the statute book. Further the appellants were the plaintiffs. They knew that their claim was totally based on the Will but there was no explanation why the witness was not examined or the original Will not placed on record in the first instance.

I see no reason to take a different view to that taken by the courts below.

Appeal is dismissed. No costs.

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

August 02, 2018
ashish

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No