

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

105

**CM-2682-C-2016 in/and
RSA-977-2016 (O&M)
Date of Decision : 31.07.2018**

Ram Kumar

..... Appellant

Versus

Ramesh Kumar and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present :- Mr. Kartar Singh Malik-I, Advocate
for the appellant.

AJAY TEWARI, J. (Oral)

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

The case of the appellant was that he had inherited the property which stood in the name of his father in equal shares with his brothers. The first limb of his argument was that the Will executed by his father excluding him was invalid and the second limb of his argument was that in any case the property was ancestral in the hands of his father. Both the courts below held that the respondents were able to prove the Will and further that the appellant was not able to prove that the property was ancestral in the hands of his father since he did not produce any record to prove the same and consequently dismissed the suit and hence the present appeal.

Alongwith the appeal an application for additional evidence has also been filed. In this application, it has been averred that the applicant -appellant is a rustic villager and because of the negligence of his counsel he did not produce the revenue record which would have proved the nature of the property being ancestral in the hands of his father.

In the first place, I am doubtful whether the negligence of a counsel can be taken to be a ground to justify an application under Order 41 Rule 27 CPC particularly when he changed his counsel in first appeal. There is no explanation why the second counsel did not advise him. Moreover, the documents now sought to be placed on record do not trace the inheritance from his great-grandfather to grandfather and from his grandfather to his father. Consequently, there is no scope of interference.

Resultantly, both the application as well as appeal are dismissed. No costs.

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

July 31, 2018
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(AJAY TEWARI)
JUDGE

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No