

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

RSA No.5965 of 2015

Date of Decision.09.05.2018

Sumitra Devi (since deceased) through LRs

...Appellant

Vs

Nirmala Rani and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Jatinder Pal Singh, Advocate
for the appellant.

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AMIT RAWAL J.(ORAL)

The appellants-plaintiffs are the legal heirs of Sumitra Devi, who was unsuccessful in the suit claiming 1/4th share in the estate of Jagdish Lal, who died on 24.06.1997 before the trial Court as well as the lower Appellate Court.

Concededly during the pendency of the appeal, she has died and being represented through legal heirs, who are grandsons i.e children of her other son and brother of Jagdish Lal. The case set up by the appellant-plaintiff was that Sumitra Devi being mother of Jagdish Lal was entitled to 1/4th share by challenging the mutation bearing No.1627 sanctioned on 21.08.1998 to be illegal and null and void.

The aforementioned suit was contested by the defendants wherein they propounded the Will dated 02.01.1997.

Mr. Jatinder Pal Singh, learned counsel appearing on behalf of the appellants-plaintiffs submitted that the defendants had

not produced the original Will despite the fact that the attesting witnesses DW-2 and DW-3 have been examined nor any application for secondary evidence was filed. Therefore, the finding of the trial Court with regard to Will having been produced in original before the Revenue Court for effecting the mutation was neither here nor there, thus, urges this Court for setting aside the finding under challenge as the mother being Class I heir is entitled to inherit share in the estate of deceased son. Since Jagdish Lal had left behind widow and two sons, who were entitled to 1/4th share, it would not devolve upon the grandsons i.e. sons of brother of Jagdish Lal, therefore, there is illegality and perversity.

I have heard learned counsel for the appellants-plaintiffs, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Jatinder Pal Singh, in view of the categorical finding of the trial Court that the original Will was produced before the Revenue Court when the mutation was effected in the year 1998. No explanation has come forth qua filing of the suit in the year 2011 when Jagdish Lal died in the year 1997. Both the attesting witnesses have deposed in terms of Section 63(c) of the Indian Evidence Act, much less, in compliance of the provisions of Section 68 of the Indian Succession Act.

In view of the aforementioned, I do not find any illegality and perversity in the judgments and decrees rendered by the Courts below, much less, the argument of Mr. Jatinder Pal Singh has not been able to bring the case within the realm of illegality and perversity enabling this Court to form an opinion other than one

already formed by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

May 09, 2018
Pankaj*

Whether speaking/reasoned	Yes
Whether reportable	No