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

**RSA-1732-2017 (O&M)
Date of decision : 30.11.2018**

Pooja Rani

... Appellant

Versus

Davender Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. S.N. Pillania, Advocate
for the appellant.

AMIT RAWAL, J.

CM-4167-C-2017

For the reasons stated in the application, the delay of 9 days in
refiling the appeal is condoned.

CM stands disposed of.

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The present regular second appeal is directed against the
concurrent findings of fact, whereby the suit of the plaintiff claiming
declaration by challenging the release deed dated 01.06.2007 conferring the
interest upon the defendant Nos.2 and 3 to be invalid in the eyes of law as
well as subsequent mutation bearing No.7931, has been dismissed by the
trial Court and affirmed by the lower Appellate Court.

The plaintiffs are daughters and widow of Surjit Singh. Ram
Singh was the owner of land measuring 370 kanals and during his life time,

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he executed three gift deeds in favour of the Surjit Singh, Rajinder Singh, his sons and Kalawati, wife. Surjit Singh died on 02.08.2004. The defendant Nos.1 and 2 are the sons of Rajinder Singh. On demise of Surjit Singh, mutation bearing No.7923, as per the inheritance, was entered, but without issuing any notice, the aforementioned mutation was changed and conferred 1/5th share in favour of Kalawati, mother of Surjit Singh. Kalawati, during her life-time, executed a release deed Ex.D1 in favour of defendant Nos.2 and 3 with regard to the property gifted to her by her husband and as regards 1/5th share, she executed a Will dated 02.12.2005 (Ex.D-2). The plaintiff propounded the unregistered Will dated 05.02.2004 and in such circumstances, claimed that the revenue entry conferring 1/5th share in favour of Kalawati could not have been recorded.

Learned counsel for the appellant-plaintiff submitted that ignoring for the moment that the Will propounded by the plaintiff dated 05.02.2004 had not been proved, but the fact of the matter is that both the attesting witnesses of the Will dated 02.12.2005 (Ex.D-2) propounded by the defendants have not been examined, whereas One Gopal Singh cousin of Tej Pal Singh, attesting witness of the Will, was examined. The defendants failed to bring on record any direct and cogent evidence to establish that both the witnesses died, in such circumstances, the provisions of Section 69 of the Indian Evidence Act cannot be invoked. In other words, compliance of Section 68 of the Indian Evidence Act and Section 63(c) of the Indian Succession Act, remained unfulfilled. Though the Will dated 05.02.2004 (Ex.P-1) was unregistered, the Courts below could not have discarded the same in the manner and mode as the witnesses Baljeet Singh and Radhey Shyam, had proved the execution of the Will, but non-assigning of reasons

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with regard to disinheriting the mother, cannot be a ground as the execution of the Will is the testimony of the deviation from the line of actual inheritance..

I am afraid the aforementioned arguments are not sustainable, for, the mother in the absence of proof of Will dated 05.02.2004 (Ex.P1) would definitely have share in the estate of her deceased son-Surjit Singh. It is in that background of the matter, the mutation bearing No.7923 was corrected and mutation bearing No.7931 was sanctioned. The plaintiff did not place on record the copy of the Will before the revenue authorities as it was an afterthought, therefore, ground of the suspicion cannot be ruled out. Kalawati on the account of execution of the gift deed had become absolute owner and she could deal with property in the manner and mode and rightly so, her share derived by virtue of gift deed was transferred during her lifetime, vide release deed (Ex.D1).

Coming to the Will dated 02.12.2005, whereby 1/5th share acquired by mutation No.7931, had been bequeathed in favour of defendant Nos.1 and 2. No doubt, the defendants have not examined two attesting witnesses, namely, Thath Singh and Tej Pal Singh and came out with a plea that both of them have died. DW2-Gopal Singh, cousin of Tej Pal Singh, was examined and he identified the signatures of his brother on the Will, but the aforementioned witness was not suggested as to the attesting witnesses, aforementioned, were alive or dead.

DW4-Baldev Singh, scribe of the Will, has also been examined. In the absence of availability and death of the attesting witnesses, the examination of scribe, as per settled law is admissible. Even the release deed has also been proved through the testimony of Pawan Kumar. All

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these factors have been examined threadbare, resulting into, dismissal of the suit.

The arguments of Mr. Pillania are not of worth appreciation to form a different opinion than the one arrived at by the Courts below, much less, no substantial question of law arises for determination. No ground for interference is made out.

Resultantly, the regular second appeal is dismissed.

30.11.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**