

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

RSA No.2552 of 2017

Date of Decision.07.05.2018

Ranjit Singh and others

.....Appellants

Vs

Gulzar Singh and other

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ranjit Singh Sidhu, Advocate for
Mr. Gopal Singh Nahel, Advocate
for the appellants.

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AMIT RAWAL J.(ORAL)

The appellants-plaintiffs are aggrieved of the concurrent finding of fact whereby the suit seeking declaration by laying challenge to the judgment and decree dated 08.10.2008 titled as “Kesar Singh etc. Vs. Gulzar Singh” and Will dated 4.6.2001 executed by Kartar Kaur i.e. grand mother in favour of defendant No.2 on the premise that the property at the hands of Gulzar Singh was ancestral as he got it from Krishan Singh and to that effect, the jamabandi had been placed on record. Kartar Kaur could not have executed the Will as she was not in sound disposing mind. The ingredients of Section 68 of the Indian Evidence had not been complied with. The suit aforementioned was filed on 3.6.2011. All these facts have not been noticed by the Courts below as the plaintiffs were none else but son and daughters of Gulzar Singh, who was arrayed as defendant No.1. The subject matter of suit is the land measuring 6 kanals which has been bequeathed by way of Will.

The suit was contested by the defendants by denying the nature

and character of the property as ancestral. It was stated that the suit had been filed in connivance with Gulzar Singh, who did not come forward and filed the written statement. The decree of the court cannot be circumvented without laying any challenge to the same.

The trial Court on the basis of evidence dismissed the suit, which was affirmed by the lower Appellate Court.

Mr. Ranjit Singh Sidhu, learned counsel appearing on behalf of the appellants submitted that the jamabandi brought on record proved that Gurlzar Singh had inherited the property from Krishan Singh and therefore, property at the hands of defendant No.1 being son of Krishan Singh was ancestral. Kartar Kaur was not having good terms with defendant No.2 and therefore, no occasion arose to execute the Will dated 4.6.2001 in his favour. The attesting witness of the Will had not been coherent and consistent in cross-examination and many contradictions have been ignored by the Courts below, therefore, there is illegality and perversity.

I have heard learned counsel for the appellants and appraised the paper book. Concededly, Gulzar Singh in the aforementioned suit moved an application for recalling of the order, which was dismissed. That was the pointer for the Courts below to decline the relief, as the plaintiffs had miserably failed to prove on record that the property at the hands of Gurlzar Singh was ancestral. The Will had also been proved as per the requirements of Section 68 of the Indian Evidence Act and Section 63 (c) of the Indian Succession Act. No illegality or suspicious circumstance had been proved, though the onus to prove the Will was on the propounder which had been discharged. Non-appearance of Gulzar Singh was also a factor which weighed in the mind of the Courts below to form an opinion

In view of the aforementioned, I do not find any illegality and perversity in the judgments and decrees under challenge as the same are based upon correct appreciation of fact and law, 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 07, 2018
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No