

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

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**RSA No. 4407 of 2017 (O&M)
Date of Decision : 26.09.2018**

Nirmal Singh

..... Appellant

Versus

Gurdev Singh & ors.

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present :- Mr. Vikas Bahl, Senior Advocate with
Ms. Japneet Kaur, Advocate
for the appellant.

AJAY TEWARI, J. (Oral)

This appeal has been filed against the judgment of the lower appellate Court reversing that of the trial Court and thereby dismissing a suit filed by the appellant. The appellant had filed a suit claiming that he had become the owner of the property in dispute on the basis of a Will made by his mother by which she had bequeathed the property entirely to him to the exclusion of two of his brothers and one sister.

The trial Court decreed the whole suit but the appellate Court having reversed the same the present appeal has been filed. It is an admitted case that both the witnesses of the Will had died and only the scribe had appeared but for some reason he could not be cross-examined. The main point of the argument of the learned counsel in support of the Will is that

one of the excluded brothers had accepted the Will. Moreover he had also testified that at the time when the Will was scribed he was also present and the two witnesses (who had died in the interregnum) had signed the Will in his presence. As per learned counsel that statement of that brother would come within the ambit of Section 69 of the Evidence Act, 1872 (for short the Act) and further in the contested mutation proceedings one of those witnesses had appeared and had testified in favour of the Will and that statement is also relevant under Section 33 of the Act and therefore, the appellate Court erred in disbelieving the Will.

The appellate Court noticed that the Will did not even refer to the other children, leaving aside giving reasons why they were excluded. The Court also noticed (and I have also been shown the photocopy of the Will) that the Will gave an impression of having been scribed on a paper which was already thumb mark because the margins are completely irregular. As regards the finding of fact about the Will I am not persuaded to hold that the appellate Court gave this finding of fact either based on no evidence or based on such a perverted misreading of evidence so as to justify the interference of this Court in the second appeal.

The second argument raised by the learned counsel is that once the appellant was in established possession then the relief of permanent injunction restraining the respondents from dispossessing him except in due course of law should have been granted atleast. In the first place a perusal of the suit reveals that that was the consequential relief which was prayed for and not an independent relief. Secondly in ***Rakesh Kumar Vs. Surjit Kumar and another, passed in RSA No.3740 of 2016 decided on***

24.09.2018 this Court after discussing the judgment of the Supreme Court in the matter of *Ramdas Vs. Sitabai and others, 2009 AIR (SC) 2735 and RSA No.3128 of 2018*, titled as *Balbir Singh Vs. Pawan Kumar and others, decided on 20.09.2018* held that it is only in very extreme circumstances that a co-owner can be allowed to deny the joint possession of another co-owner.

In the present case also I find that the consequential relief of permanent injunction was rightly declined. Once the Will has been discarded the appellant would only be entitled to be the owner of 1/4th share in terms of natural succession.

Appeal stands dismissed.

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

(AJAY TEWARI)
JUDGE

26.09.2018
Pooja sharma-I

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No