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

RSA-5499-2017 (O&M)

Date of decision : 30.08.2018

Shankar (deceased) through LR's and others

... Appellants

Versus

Bimla Devi and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. B.S. Rana, Senior Advocate with
Ms. Pooja Bansal, Advocate
for the appellants.

AMIT RAWAL, J. (ORAL)

The appellant-defendant in the present regular second appeal has assailed the judgment and decree of the lower Appellate Court, whereby the suit of the respondent-plaintiff dismissed by the trial Court, has been decreed.

The suit, aforementioned, was filed claiming declaration and permanent injunction challenging the decree dated 09.11.1994 in a Civil Suit No.595 of 1994 on the premise that Ghoghari @ Ghoghan @ Gindori had died on 17.12.1987, but the defendants had manipulated to make some other person impersonate Ghoghari and appeared in the Court.

The defendants contested the suit by denying the date of death of Ghoghari as 17.12.1987.

Before the trial Court, the plaintiffs did not examine any expert, but defendants had examined advocate, who had appended and appeared on

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behalf of Ghogari, resulting into, dismissal of suit.

In appeal before the lower Appellate Court, an application under Order 41 Rule 27 of the Code of Civil Procedure was filed for placing on record the certified copy of death certificate as Ex.PW-1/1. The same was allowed, therefore, the judgment and decree of the trial Court has been set aside.

Mr. B.S. Rana, learned Senior Counsel, assisted by Ms. Pooja Bansal, learned counsel appearing on behalf of the appellants-defendants submitted that the onus to prove the document was upon the plaintiffs, which has not been discharged. Mere exhibition of the document does not dispense with its proof. In support of his contentions, reliance has been laid to the judgment of Hon'ble the Supreme Court in **“Sait Tarajee Khim Chand and others Vs. Yelamarti Satyam and other” 1971 AIR SC 1865,** therefore, it could not be looked into, thus, there is an abdication, much less, perversity.

I have heard learned counsel for the appellants-defendants, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Rana, for, it was incumbent upon the defendants to raise objection qua admissibility of the document. In the absence of the same, the document has been read in evidence. Moreover, it is a matter of fact that one of the witnesses of defendants DW-2, on a specific question in cross-examination, admitted the date of death of Ghoghari, in the year 1987. All these factors, if looked into cumulative, leads to an irresistible conclusion that Ghoghari was not alive at the time of decree dated 09.11.1994 on the basis of statement of impersonated Ghoghari.

Keeping in view the aforementioned facts and circumstances, I

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do not find any illegality and perversity in the judgment and decree of the lower Appellate Court which is based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination.

No ground is made out for interference.

The present regular second appeal is dismissed.

30.08.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

✓

Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**