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

**RSA-1286-1987 (O&M)
Date of Decision : 30.04.2019**

Singh Ram (dead) through LRs

... Appellant

Versus

Balli (deceased) through LRs

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Jai Vir Yadav, Advocate and
Mr. C.B. Goel, Advocate
for the appellant.

Mr. Vikas Kumar, Advocate
for the respondent

AMIT RAWAL, J.

The present regular second appeal is directed against the concurrent findings of fact, whereby the suit of the respondents-plaintiffs for declaration challenging the mutation in favour of the defendant to be illegal, null and void and not binding upon the right and title of the plaintiff and other legal rights of Parwati, according to their share, by laying challenge to the Will, as null and void, has been decreed by the trial Court and affirmed in appeal.

The aforementioned relief was sought on the assertion that Lal Singh was the owner of the property, in dispute, and died issueless and after his death, his wife Parwati became the owner of the properties in two

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villages i.e. land measuring 22 kanals 7 marlas in Village Mandori and 58 kanals 19 marlas in Village Pakhal. She inherited the land from her husband and had no right to will away the property. Parwati had left the house and mutation, in respect of the suit land situated in Mandori, was sanctioned in favour of various other persons including the plaintiff and the defendant, on 23.11.1960. However, the impugned mutation, was obtained on the basis of the Will dated 28.05.1974. She was unheard off, whether alive or died.

The defendant opposed the suit and claimed the ownership of the property and the mutation, on the basis of the registered Will by alleging that Parwati, died in the month of August 1974 at Prel Colony, Faridabad and had earlier also executed the lease deed, in respect of land, situated at Village Pakhal. The Will was duly registered before the Sub-Registrar, in the presence of the witnesses and duly scribed by the Deed Writer.

Since the parties were at variance, the trial Court framed the following issues:-

- 1. Whether mutation in favour of the defendant No.1 is wrong and illegal and not binding on the plaintiff? OPP*
- 2. Whether plaintiff and defendant are legal heirs of Smt. Parwati ? OPP*
- 3. Whether the Will dated 29.4.1973 is valid? OPD*
- 4. Relief.*

Both the parties led extensive evidence in support of their respective cases.

On the basis of the evidence brought on record, the trial Court decreed the suit and the appeal laid before the lower Appellate Court also met with the same fate.

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Mr. Yadav, learned counsel appearing on behalf of the appellant submitted that vide CM No.15697-C of 2017, permission of this Court has been sought to place on record original Will, which has been found, during the pendency of the appeal and it is essential and necessary for the adjudication of the appeal as whole controversy is based upon the authenticity of the same. The same was found in the trunk and immediately, the application has been filed.

Mr. Vikas Kumar, learned counsel appearing on behalf of the non-applicant/respondent opposed the application for additional evidence on the premise that since Parwati was not alive at the relevant point of time, certified copy of the Will cannot be taken into evidence or report from the trial Court can be sought. The application is bereft of any explanation of its proof with admitted signatures.

On merits, Mr. Yadav, submitted that Ex.D1, has been misinterpreted by the Courts below particularly the lower Appellate Court as date of 29.08.1974 has been read as 09.04.1974, in fact, Parwati died in the month of August 1974, that was sufficient piece of evidence to form an opinion that she was alive at the time, when the Will was executed. The appellant-defendant cannot be non-suited on the ground of having not asserting any right in respect of land situated at Village Mandori. The plaintiff did not lay challenge to the Will. The finding on issue No.2, devolution of the estate of Parwati, as per the Hindu Succession Act, was neither here and there, in view of the testamentary document. The appellant-defendant filed a suit under Section 77 of the Punjab Tenancy Act, against the tenants, which was decreed and the Will was held to be legal and valid. It is, on that premise, the mutation, impugned, was

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sanctioned in favour of the defendant, after completion of all the formalities. The Courts below have not taken into consideration the factum of the findings in a proceeding under Section 77 of the Punjab Tenancy Act. There was no suspicious circumstances surrounding in the Will, thus, urges this Court for setting aside the concurrent findings, under challenge.

Per contra, Mr. Vikas Kumar, learned counsel appearing on behalf of the respondent submitted that the defendant has not examined any other witness in terms of the provisions of Section 50 of the Indian Evidence Act, to establish on record that Parwati was alive, during all this period. If at all, she was alive, as stated to have died in August 1974, no such claim has been asserted, in respect of the land situated at Village Mandori, which was in 1960 mutated in favour of the collateral, including the plaintiff and the defendant. The death certificate has not been proved in accordance with law as it was only tendered. Mere exhibition of the document does not dispense with its proof, in view of the *ratio decidendi* culled out by Hon'ble the Supreme Court in **“Sait Tarajee Khim Chand and others Vs. Yelamarti Satyam and others” 1971 AIR SC 1865**, thus, urges this Court for dismissal of the present regular second appeal as well the application for additional evidence.

I have heard learned counsel for the parties, appraised the paper book as well as records of the Courts below and of the view that the following 'Substantial Questions of Law' arise for determination:-

- 1. Whether the judgments and decrees of the Courts below are result of misreading and misinterpretation of the documents, resulting into, perversity?*
- 2. Whether report of the trial Court can be sought by allowing*

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*the original Will on record by way of additional evidence,
subject to its mode of proof and authenticity?*

In the first flush, the arguments of Mr. Yadav looked to be attractive, but on going through the contents of the application, it is revealed that there is no reference of any document, required, to be examined, for the purpose of comparison of thumb-impressions/signatures on the original Will. An attempt was made with regard to the lease deed of 1955, which was also shown during the course of hearing, but it was a certified copy and not the original one. If at all, the lease deed was in existence, no steps have been taken to summon the record to drive some force in the defence. Julfi Ram-DW3, the attesting witness of the Will, was an employee of Delhi High Court and other attesting witness was an Advocate, though the Will was executed at Faridabad. It was just few months before the alleged death of Parwati. Ex.D1 is not a conclusive piece of evidence to form an opinion regarding death. The defendant/appellant has not been able to show strength in the argument to establish the authenticity and genuinity of the original Will that actually it was thumb-marked by Parwati or somebody else. The provisions of Section 50 of the Indian Evidence Act postulate any party to lead evidence regarding the relations. For the sake of brevity, Section 50 of the Indian Evidence Act reads as under:-

"50. Opinion on relationship, when relevant.—When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, or any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact: Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the

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Indian Divorce Act, 1869 (4 of 1869) or in prosecutions under section 494, 495, 497 or 498 of the Indian Penal Code (45 of 1860)"

No such steps have been taken as to whether Parwati was actually living, at that time. Neither the voter card, ration card or any proof of the area where she alleged to have died i.e. Prel Colony, Faridabad. If at all, there was some truthfulness in the assertion, no sane person would sit at home and assert the right in respect of the property situated at Village Mandori, which was mutated way back, in the November 1960 in favour of all the collateral. In my view, seeking a report from the trial Court regarding the veracity and authenticity of the Will, would be too farcical exercise.

Keeping in view the aforementioned facts, the judgments and decrees, under challenge, cannot be said to be suffering from illegality and perversity, much less, no ground is made out for interference. The Substantial Questions of Law, as framed above, are answered against the appellants-defendants and in favour of the respondents-plaintiffs.

Resultantly, the second appeal as well as the application for additional evidence are dismissed.

30.04.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

✓

Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**