

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

RSA No.3070 of 2004 (O&M)

Date of decision : 11.02.2019

Bishan Lal and others

...Appellants

Versus

Ramavtar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sanjay Mittal, Advocate for the appellants.

Mr. Jai Vir Yadav, Advocate and
Mr. Tapan Kumar, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

Defendants-appellants are in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below decreeing the suit filed by the plaintiffs-respondents for declaration that they are owners in possession of the property with consequential relief of permanent injunction restraining the defendants from interfering in their possession.

Dispute in the present case is with respect to property owned by late Sh. Ghisa Ram who died issueless. He was related to the parties in equal degree. On the death of Ghisa Ram, the property was succeeded by the plaintiffs and the defendants. The suit had been filed by the plaintiffs claiming that they alongwith proforma defendants are owners of half share

of the land left by late Sh. Ghisa.

Defendants contested the suit and pleaded that Ram Lal was not having any child and a writing was executed on 24.02.2004 B.K. (which is equivalent to 1946 approximately as per English Calendar) wherein Ram Lal had agreed to give up his rights of succession from the property of late Sh. Ghisa if he is permitted to adopt a son.

The aforesaid writing has been produced on file as Ex.DW4/A. Both the Courts held that such writing being unregistered document cannot result in transferring of the rights in the immovable property worth more than ₹100/-. It has been found by the Courts that Ghisa had died more than one year before the alleged writing dated 24.02.2004 B.K. and since the property had fallen to the shares of the parties, therefore, such writing cannot be treated as relinquishment of the rights in the immovable property unless it is by a registered instrument.

This Court has heard the learned counsel for the parties at length and with their able assistance gone through the judgments passed by both the Courts below and the record.

Learned counsel for the appellants submitted that the writing dated 24.02.2004 B.K. is in fact a family settlement and, therefore, does not require registration. He has read the translation of the aforesaid document which is part of the file.

On plain reading of the aforesaid document, it is apparent that since Ram Lal was wanting to adopt a son and other relations were objecting thereto, therefore, a condition was incorporated that if Ram Lal gives up his rights in the property inherited from Ghisa, then he would be

permitted to adopt. First of all that writing is in presenti. The relinquishment of any right even through family settlement in immovable property worth more than ₹100/- is not permissible without a registered document in view of Section 17 of the Registration Act, 1908. Secondly, this document is not in the form of Memorandum which may save it from the rigors of the Registration Act.

Learned counsel for the appellants further contended that suit filed by the plaintiffs was barred by limitation as mutation of the property had been sanctioned on 10.06.1953 in favour of the defendants-appellants.

This Court has considered the submission. Mutation is entered and sanctioned for updating the record and that also for fiscal purpose. The entering and sanctioning of mutation neither give rise to any cause of action nor it affects the rights of a co-owner.

In view thereof, there is no ground to interfere with the concurrent findings of fact arrived at by both the Courts below.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

11.02.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No