

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

RSA No.2967 of 2013 (O&M)

Date of decision: 19.08.2019

Kuldeep Kaur

... Appellant

Versus

Baljit Singh and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Vivek Suri, Advocate
for the appellant.

Mr. Akshay Jindal, Advocate
for the respondents.

REKHA MITTAL, J. (Oral)

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby challenge to the judgment and decree dated 16.05.1990 and claiming share in the estate of Sh. Mansa Singh, father of the appellant was dismissed by the trial Court vide judgment and decree dated 28.02.2011 that came to be affirmed in appeal by the Additional District Judge, Panchkula.

The appellant/plaintiff claimed right in the suit property on the premise that she is one of the daughters of Sh. Mansa Singh who died on 26.09.1989. She was constrained to shift to her ancestral house on 10.06.2001 as she had marital discord with her husband Sh. Kuldip Singh. On 01.03.2005, Baljit Singh defendant No.1 asked her to vacate the property by propounding a Will purported to be executed by late Sh. Mansa

Singh. On inquiry, it was revealed that her brothers defendants No.1 to 3 filed a suit for declaration and obtained judgment and decree dated 16.05.1990. It is averred that the said judgment and decree has been obtained by her brothers by submitting a joint written statement procured from her and her sisters and their mother. The said document was got signed from them on the pretext that their mother Smt. Tulsa was not well and remembering her daughters. She challenged the judgment and decree being null and void and the same do not comply with mandatory provisions of Section 63 of the Evidence Act.

Counsel for the appellant would argue that consistent findings recorded by the Courts are not based upon correct appreciation of materials on record, therefore, cannot be allowed to sustain. It is further argued that the appellant tendered into evidence her duly sworn affidavit by way of examination of chief and the same is more than sufficient to establish her plea raised in the case.

Counsel representing the respondents, on the contrary, has supported concurrent findings recorded by the Courts with the submission that the appellant failed to adduce satisfactory much less cogent and convincing evidence to establish her plea with regard to the manner in which her signatures were obtained on the written statement admitting claim of defendants No.1 to 3 in the suit for declaration that culminated in judgment and decree dated 16.05.1990. It is further argued that the appellant tendered into evidence her affidavit by way of examination in chief but never turned up for cross examination, therefore, there is no iota

of evidence to establish her plea raised in the suit.

Indisputably, the appellant is the daughter of Sh. Mansa Singh and sister of defendants No.1 to 3. Her entire claim is based upon challenge to judgment and decree dated 16.05.1990 which was based on written statement filed by defendants in the said suit admitting claim of defendants No.1 to 3 with regard to their ownership of the suit property. The appellant appeared in the witness box and tendered her affidavit by way of examination in chief but thereafter opted to remain away from the witness box for the reason best known. In the given scenario, the Courts have rightly refused to rely upon her incomplete testimony. Since the appellant failed to adduce any evidence to establish the circumstances under which she was made to sign the written statement admitting claim of defendants No.1 to 3 in the previous litigation, it is difficult to accept contention of the appellant that concurrent findings recorded by the Courts suffer from an error much less perversity, warranting intervention.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed leaving the parties to bear their own costs.

19.08.2019

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No