

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

**RSA No.1944 of 2015 (O&M)
Date of Decision.06.02.2019**

Sunil Kumar and another

...Appellants

Vs

Shanti and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Abhinav Sood, Advocate
for the appellants.

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AMIT RAWAL J. (ORAL)

The appellants-plaintiffs have not been successful in claiming declaration qua estate of Bhulla Ram @ Bhulla on the basis of Will dated 24.11.1998.

Plaintiffs alleged that Bhulla Ram had bequeathed the property in favour of his grandsons i.e. children of his two sons namely Sher Singh and Chatter Singh whereas defendants allegedly propounded the existing Will bearing No.30 dated 18.02.1998 only in favour of defendant No.2. Defendants had also filed civil suit claiming declaration on the basis of the aforementioned registered Will but the same was dismissed for default.

Defendants set No.1 stated the Will dated 24.11.1998 to be forged and fabricated and not legally executed by Bhulla Ram. They propounded the Will dated 18.02.1998 to be the registered and final one. Even mutation on the basis of aforementioned Will was effected.

Plaintiffs examined three witnesses and tendered documents Ex.P1 to P3 whereas defendants examined as many as five

witnesses and brought on record Ex.D1.

Mr. Abhinav Sood, learned counsel appearing on behalf of the appellants submitted that in view of bar under Order 9 Rule 9 CPC as well as in the absence of any denial with regard to dismissal of the previous suit claiming declaration on the basis of Will dated 18.02.1998, counter-claim was not maintainable. There was no need of pressing for an issue once specific averment in the plaint was not emphatically denied. Though the trial Court dismissed the suit, there is no finding with regard counter-claim but had rendered the finding in paragraph 15 in favour of defendants holding the Will Ex.D1 dated 18.02.1998 to be a genuine document, as the plaintiffs failed to point out any ambiguity in the Will. Only one witness was examined nor any person authorized from the Sub Registrar or scribe was produced. In such circumstances, Courts below ought to have discarded the Will and share of Bhulla Ram would have devolved upon legal heirs by natural succession, thus, urges this Court for setting aside the finding under challenge.

I have heard learned counsel for the appellants, appraised the paper book and of the view that there is no force and merit. If at all, the appellants-plaintiffs were so sure that Bhulla Ram had executed Will Ex.D1, assistance of expert could have been taken, despite the fact that the mutation was on the basis of natural succession. It is settled law that mutation does not confer any title. The plaintiffs miserably failed to prove aforementioned Will except that they examined one Dharampal PW2, who stated that he was a resident of the village Karkhana. Bhulla was stated to be aged 85

years whereas in fact, he was 75 years old. Since there is no decree with regard to declaration, counter-claim regarding Ex.D1 aforementioned cannot be said to be against their interest. It is matter of record that previous decision dismissing the suit in default has not seen light of the day. The Court was prevented from pondering qua applicability of provisions of Order 9 Rule 9 CPC.

In view of such circumstances, the argument of Mr. Sood regarding bar of counter-claim is hereby repelled. I do not find any illegality and perversity in the concurrent finding of rendered by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

February 06, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No