

RSA No.2977 of 2015 (O&M)

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

RSA No.2977 of 2015 (O&M)

Date of decision:23.01.2019

Mukhtiar Singh and others

... Appellants

Vs.

Mahender Singh (deceased) through LRs and others

...

Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. S.R.Hooda, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

The present regular second appeal is directed against the concurrent findings of fact and law, whereby, suit of the appellant-plaintiffs claiming declaration and ownership of suit land with regard to estate of Baljit Singh by laying challenge to the mutation dated 29.2.1964, Ex.P14, has been dismissed.

It was alleged that Baljit Singh was not known for the last more than 07 years and on the basis of death, revenue officer entered the mutation in favour of defendants, whereas, plaintiffs were also co-lateral.

In support of the averments, plaintiffs examined numerous witnesses and brought on record the mutation. The defendants also led the evidence and it has come on record that in the year 1992, some part of the land was acquired and Baljit Singh himself claimed compensation.

Mr. S.R.Hooda, learned counsel appearing on behalf of the appellant-plaintiffs submitted that there was presumption of death of Baljit Singh as per the provisions of Section 108 of Indian Evidence Act. The

mutation could not have been entered in favour of the defendants being co-lateral as the plaintiffs were denied the right of inheritance being also co-lateral. PW4-Amar Patwari also proved that on 09.04.1992, the land was acquired vide award and Baljit Singh had received a sum of Rs.5,40,632.15 paise on identification of Attar Singh, Numberdar. In such circumstance, mutation could not have been sanctioned and the suit was liable to be decreed.

I am afraid the aforementioned argument is not sustainable, for, once the plaintiffs' witnesses disclosed the fact that Baljit Singh was alive in the year 1992 and received the compensation of Rs.5,40,632.15 paise, the presumption of death of Baljit Singh as per the provisions of Section 108 of Indian Evidence Act, could not have been believed. No decree or any evidence has been led on record to establish that he was not heard and deemed to have died. The pleadings and testimony of the witness of PW4, are totally different. If at all, Baljit Singh was alive, he could have cause of action to assail the mutation. It still remained mystery whether Baljit Singh after 1992 was alive nor not. The findings of fact and law cannot be said to be suffering from illegality and perversity in a suit filed in the year 2007.

No ground for interference is made out.

Resultantly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

January 23, 2019

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Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No