

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

**RSA No.4703 of 2016 (O&M)
Date of Decision.09.05.2019**

Chanchal Devi @ Chanchal Rani

...Appellant

Vs

Parshotam Dass and others

..Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. K.S. Rekhi, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

The present regular second appeal is against the concurrent finding of fact whereby suit of the appellant-plaintiff claiming right in the suit property to the extent of 1/5th share regarding share of her father Gurditta Mall, alleged to have died intestate, has been dismissed by the trial Court and affirmed in appeal.

It was alleged that Gurditta Mall died intestate. Earlier defendants propounded Will dated 23.11.1990 but on demise of Gurditta Mall on 13.3.2002, obtained mutation on 19.07.2002, which was set aside. Another registered Will dated 25.04.1994 was propounded, alleged to have been attested by Thaman Singh and Sham Singh. The Will was forged and fabricated.

Defendants opposed the suit by raising preliminary objection qua maintainability and applicability of provisions of Order 2 Rule 2 CPC as earlier similar suit for declaration bearing No.291 filed on 19.12.2006 was dismissed as withdrawn on 06.12.2007 without any liberty. On the basis of registered Will dated 25.04.1994,

mutation was effected on 31.5.2004, which was assailed by plaintiff but remained unsuccessful before the Collector in appeal and as well as Commissioner.

Both the parties led extensive evidence.

Plaintiff in support of evidence examined herself and three other witnesses and brought on record Ex.P1 to P16 whereas defendants examined eleven witnesses including handwriting expert and brought on record Ex.D1 to D13.

Mr. Rekhi, learned counsel appearing on behalf of the appellant submitted that the second Will was suffering from suspicious circumstances *de hors* of the fact that it was registered, as the attesting witness did not appear. Handwriting expert could not properly examine standard signatures with the admitted signatures i.e. on another sale deed executed by Gurditta Mall. DW2 Achhar Singh deed writer could not prove entry of the Will in the register as Ex.D4. In such circumstances, Gurditta Mal deemed to have died intestate and property was required to be devolved as per natural succession.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit, for, no explanation has come forth for withdrawing the suit without liberty. Provisions of Order 2 Rule 2 CPC were incorporated by the Legislature to prevent, repeated filing of the suit, in case similar suit had been withdrawn without any liberty to file a fresh one. Plaintiff deemed to have abandoned the claim. Handwriting expert had been coherent and consistent regarding thumb impression of Gurditta Mall on comparison of the admitted thumb impression on the sale deed

with that of the Will. In my view, present suit has been filed by a disgruntled sister, who never wanted to live her brothers in peace.

In view of such circumstances, I do not find any illegality and perversity in the concurrent finding of fact and law 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

May 09, 2019
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No