

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

**RSA No.3966 of 2015 (O&M)
Date of Decision.24.01.2019**

Jaswant Kaur (since deceased) through LRs ...Appellants

Vs

Tej Kaur and others ...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Anand Chhibbar, Senior Advocate with
Mr. Amitabh Tewari, Advocate
for the appellants.

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AMIT RAWAL J. (ORAL)

C.M. No.9690-C of 2015

For the reasons stated in the application, delay of 33 days
in re-filing of the appeal is condoned.

Application is allowed.

RSA No.3966 of 2015

The present regular second appeal is directed against the
concurrent finding of fact whereby suit of the appellant-plaintiff
represented by legal heirs claiming declaration and permanent
injunction with regard to share of Kapoor Singh @ Mohinder Singh,
her matrimonial uncle, by laying challenge to the Wills and judgment
and decree, has been dismissed by the trial Court and affirmed in
appeal by the lower Appellate Court.

Jaswant Kaur was daughter of Sawan Singh and Laxmi
Devi. The land of Laxmi Devi was inherited by Kapoor Singh @
Mohinder Singh, being close relative of Sawan Singh by virtue of
Hindu Succession Act. Kapoor Singh @ Mohinder Singh died

issueless as he was unmarried also. The plaintiff contacted the Halqa Patwari and came to know that land was inherited by Kapoor Singh from her mother. Kapoor Singh illegally suffered judgment and decree dated 24.12.1969 as well as Will dated 16.08.1958.

Defendants No.1 to 7 opposed the suit and stated that the land was purchased by them by virtue of two sale deeds in the year 1982 and one in 1990 and judgment and decree of 1969. Objection qua limitation was also raised.

Rest of the defendants proceeded ex parte.

Plaintiffs in support of the evidence, examined PW1 official from the office of D.C. Ambala, Niranan Singh PW2, Ravinder Singh PW3 and Kuldeep Singh as PW4 and tendered documents Ex.P1 to P71A, attested copies of list of persons who had given 'shagun' in the marriage Gurmail Kaur and Pritpal Singh, judgments and decrees, written statements, jamabandies and mortgage deed etc. On the other hand, defendants examined as many as ten witnesses and brought on record Ex.D1 to D51.

Mr. Anand Chhibbar, learned Senior Counsel assisted by Mr. Amitabh Tewari, learned counsel appearing for the appellants submitted that Kapoor Singh could not have alienated the property by way of consent/collusive decrees as it was ancestral. Both the Courts below abdicated in not referring to the documentary evidence which established relations of plaintiff with Kapoor Singh. Photographs and shagun ceremonies were sufficient to form an opinion as there was compliance of provisions of Section 50 of the Indian Evidence Act. Defendants are none else but strangers to the family of Kapoor Singh

and therefore, appellants being the collateral had right as per provision of Section 8 of the Hindu Succession Act.

I am afraid aforementioned argument of Mr. Chhibbar is not sustainable. Provisions of Section 50 of the Indian Evidence Act reveal that to form an opinion regarding relationship of one person to another, opinion expressed by conduct or knowledge of family members by special means is relevant. For the sake of brevity, Section 50 of the Indian Evidence Act is reproduced as under:-

“50. Opinion on relationship, when relevant.—When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, or any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact: Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act, 1869 (4 of 1869) or in prosecutions under section 494, 495, 497 or 498 of the Indian Penal Code (45 of 1860).

The photographs are not conclusive piece of evidence and compliance of provisions of Section 50 *ibid*. It was obligatory upon the plaintiff to establish the relationship to claim declaration by laying challenge to the Wills and decrees. In the absence of the same, plaintiff miserably failed to discharge the onus as required under Section 101 of the Indian Evidence Act.

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

January 24, 2019

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No