

RSA-5502-2016 (O&M)

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

**RSA-5502-2016 (O&M)
Date of decision : 06.03.2019**

Sudesh Rani

... Appellant

Versus

Malik Devi and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Munish Raj Chaudhary, Advocate
for the appellant.

AMIT RAWAL, J. (ORAL)

The appellant-plaintiff is, in the present regular second appeal, against the concurrent findings of fact, whereby the suit claiming declaration to be owner in possession of the land left by Jawahra Ram son of Sona Ram, as described in the plaint, by laying challenge to the sale deeds dated 29.03.2006 and 26.05.2006, has been dismissed by the trial Court and affirmed in appeal.

It was alleged that Jawahra Ram was owner in possession of the land measuring 104 kanals 5 marlas and 57 kanals 6 marlas. About six years ago, died intestate without leaving any Class-I heirs nor had adopted any child or executed any Will. The plaintiff being grand daughter of Lachhman Ram, brother of the deceased, exclusively inherited the aforementioned land and came into possession. Defendant No.1 in collusion with the revenue officials, managed to obtain a mutation No.978 regarding the inheritance of the deceased, at the back of the plaintiff. In a lust of greed and undue enrichment, executed the sale deed *ibid*. The land was joint property as no partition had been effected.

The defendants contested the suit by raising the objections qua

RSA-5502-2016 (O&M)

locus standi of the plaintiff or his ownership, much less, possession. The right of the plaintiff was opposed on the premise that Jammu Ram, brother of the deceased, was alive and therefore, as per the provisions of Schedule in the Hindu Succession Act, was Class II heirs, as the plaintiff was none-else, but the grand-daughter of Lachhman Ram. Jawahar Ram and his wife , with the consent of Jammu, adopted the defendant i.e. Malak Devi as daughter. All the ceremonies were performed.

Defendant Nos.2 and 3 also filed the joint written statement and opposed the suit.

The plaintiff in support of the pleadings examined five witnesses and tendered in evidence many documents, whereas the defendants examined sixteen witnesses.

Mr. Munish Raj, learned counsel appearing on behalf of the appellant-plaintiff submitted that the judgments and decrees of the Courts below are not sustainable in the eyes of law, as the they suffered from illegality and perversity. The original Will dated 06.04.1992 was proved on record as Ex.D14. The defendants also produced the Will dated 23.04.1998 executed by Jawahra Ram, in her favour, but failed to prove either the adoption or the alleged Will. Ex.P1 and Ex.P2, the sale deeds, executed by defendant No.1, in favour of defendant No.3, were challenged. The witnesses proved on record that Jawahra Ram never adopted defendant No.1 as daughter. Babu Lal, Registration Clerk, brought on record the cancellation deed dated 27.03.1995, regarding cancellation of Will of Jawahra Ram, which has been proved on record as Ex.PW3/A and registration Ex.PW3/B.

I am afraid the aforementioned arguments are not sustainable in

RSA-5502-2016 (O&M)

the eyes of law, for, even if, the Will is discarded, the plaintiff has no right to succeed to the estate as the plaintiff failed to belie the suspicious circumstances surrounding the Will as well as the cancellation. DW-13, Teja Singh, one of the attesting witness, identified the signatures on the Will dated 23.04.1998 (Ex.D25). The plaintiff is none-else, but the maternal grand daughter of Lachhman Ram, brother of Jawahra Ram. No evidence has been placed on record of the pedigree table. In cross-examination, she admitted that her maternal uncle was Lachhman and they had five sisters including herself. Mutation of inheritance dated 01.02.1999 was incorporated on the basis of the Will, therefore, the sale deeds cannot be said to be suffering from any illegality and perversity as they were after the mutation, which remained unchallenged by the plaintiff. DW12, Ram Sharan Watts, deed writer/scribe, proved the Will by bringing on record the register Ex.D26, reflecting against Sr. No.147. The sale deeds have been executed in favour of defendant No.2, on the basis of the share received by defendant No.2, from the estate of Jawahra Ram.

As an upshot of my finding, I do not subscribe to the submissions of Mr. Munish Raj, to form a different opinion than the one already arrived at by the Courts below, much less, no substantial question of law arises for determination. Resultantly, the second appeal is dismissed.

06.03.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**