

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.6067 of 2015 (O&M)

Date of Decision: January 29, 2019

Pritam Singh (since deceased) through legal representative

...Appellant

Versus

Mohinder Singh (since deceased) through legal representatives & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Puneet Sharma, Advocate,
for the appellant.

AMIT RAWAL, J. (Oral)

The present Regular Second Appeal is directed against the concurrent findings, whereby the suit of the appellant-plaintiff claiming declaration to be owner in possession of suit land measuring 64 kanals on the basis of the registered Will dated 30.05.1978 executed by Pal Kaur, his mother, challenge to the sale certificate dated 22.01.2003 and relief for injunction qua possession has been dismissed by the trial Court and affirmed in appeal.

Plaintiff alleged to be the owner of the entire land on the basis of the registered Will executed by Pal Kaur and also laid challenge to the sale certificate in favour of the legal representatives.

Defendant denied the execution of the Will and claimed that Pal Kaur died intestate.

Plaintiff, in support of the evidence, examined PW-1 Constable

Gurwinder Singh, PW-2 Daljit Kaur, PW-3 Murari Lal, PW-4 Sumittar Kaur, PW-5 Amrik Singh, PW-6 Raj Bala Puri, PW-7 Babu Ram, PW-8 Pritam Singh, PW-9 Daljit Kaur and PW-10 Mohinder Kumar, whereas the defendant examined two witnesses, i.e., DW-1 Mohinder Singh and DW-2 Resham Singh.

Mr. Puneet Sharma, learned counsel appearing on behalf of the appellant-plaintiff submitted that the judgments and decrees of the courts below are not sustainable as the registered Will has been summoned through the office of Sub Registrar and proved on record. The original was lost after filing of the suit and its existence has been proved through the testimony of PW-1 Gurvinder Singh. Even the relief under Section 16 of the Punjab Package Deal Properties (Disposal) Act, 1976 (for short, 1976 Act) laying a challenge to the sale certificate was not maintainable. The courts below could have granted declaration as the Will has been proved on record.

I am afraid, the aforementioned argument is not sustainable as the original Will has not seen the light of the day and there is no application for secondary evidence. Lower Appellate Court in Para 31 of the judgment noticed the aforementioned fact. Section 16 of 1976 Act bars the jurisdiction of the courts below with regard to the challenge of any allotment. Plaintiff miserably failed to prove the existence and loss of the Will. Production of the copy of the certified copy is not a primary evidence. In such circumstances, Pal Kaur deemed to have been died intestate and, therefore, existence of the sale certificate issued in favour of all the legal representatives cannot be said to be void.

For the reasons mentioned above, I do not find any illegality or perversity in the concurrent findings, which are based on appreciation of

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oral and documentary evidence. No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed on merit and as well as delay.

January 29, 2019
ramesh

(AMIT RAWAL)
JUDGE

**Whether speaking/reasoned
Whether Reportable:**

Yes/No
Yes/No