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

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Date of decision : 05.02.2019

Malkiat Kaur and another

... Appellants

Versus

Darshan Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. A.P.S. Shergill, Advocate
for the appellants.

AMIT RAWAL, J. (ORAL)

The appellants-plaintiffs are in regular second appeal against the concurrent findings of fact, whereby the suit for separate possession by way of partition to the extent of 1/4th share each out of the land mentioned as property No.1 shown as ABCD and various other properties, has been dismissed by the trial Court and affirmed by the lower Appellate Court.

It was alleged that the aforementioned land was originally owned and possessed by Gurdial Singh, father-in-law of plaintiff No.1 and father of plaintiff No.2. Gurdial Singh had four sons, namely, Jasbir Singh, Krishan Singh, Darshan Singh and Dharambir Singh and after his demise, the property was inherited by the all sons, in equal shares. The defendants were brought the building material at the spot and taking steps for raising construction. The repeated requests of the plaintiffs did not yield any result, therefore, the suit, aforementioned, was filed.

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The defendants opposed the suit by taking objection with regard to the maintainability, non-joinder and on merits, it was stated that property of Gurdial Singh in Village Butrela, U.T. Chandigarh, was not included, but during his life time, all the brothers and sisters had divided their shares, which is in their exclusive and separate possession.

Mr. A.P.S. Shergill, learned counsel for the appellants-plaintiffs submitted that both the Courts below have not appreciated the documentary evidence brought on record, much less, law as the defendants failed to prove that the parties to the *lis* had partitioned their properties and were exclusive owners in possession. Gurdial Singh, in his will, bequeathed the entire property to the extent of 1/4th share. PW2, Registration Clerk, brought the summoned record of Will dated 02.03.1976. In such circumstances, the Courts below ought to have granted the preliminary decree, thus, urges this Court for setting aside the concurrent findings of fact as there is gross illegality and perversity.

I have heard learned counsel for the appellants-plaintiffs, appraised the paper book as well as the records of the Courts below and of the view that the first and foremost question to be determined is whether the plaintiffs have been able to prove the execution of the Will, much less, its existence, despite the fact that they had been given a chance to prove by way of secondary evidence. The answer is 'No' as no attesting witness or scribe has been examined. There was no compliance of provisions of Sections 68 and 69 of the Indian Evidence Act and Section 63(c) of the Indian Succession Act. The jointness of the property has not been proved. All the parties have been in exclusive possession since many years.

As an upshot of my finding, I do not subscribe to the

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submissions of Mr. Shergill, that there was jointness of the property amongst the co-sharers. I do not find any illegality and perversity in the concurrent findings of fact, much less, no substantial question of law arises for determination. No ground for interference is made out.

Resultantly, the second appeal is dismissed.

05.02.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**