

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

RSA No.1431 of 2017 (O&M)

Date of decision:14.01.2019

Jarnail Kaur and another

... Appellants

Vs.

Jora Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Ashwani Bakshi, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

The present appeal is directed against the concurrent findings of facts and law, whereby, appellant-plaintiffs being daughters of Joginder Singh have not been successful in claiming the possession and declaration challenging the decree dated 31.07.1992 in respect of land measuring 46 kanals 8 marlas situated in village Aklia I and II and as well as registered Will dated 23.07.1979 executed in favour of the defendants, who were none-else but brothers.

It was alleged that fraud was played upon Joginder Singh by the defendants, resulting into passing of the decree. He could not have executed the Will. The Will was suffering from suspicious circumstances and therefore, Joginder Singh deemed to have died intestate. In such circumstances, claimed the possession having a right in the suit property.

The defendants opposed the suit and submitted that Joginder

Singh was alive almost for 16 years after execution of the Will and died in the year 1995. The Will was not forged and fabricated but registered document and mutation was also sanctioned on the basis of the aforementioned document.

Defendants no.6 and 7 filed a separate written statement and supported the claim of the contesting defendants. The plaintiffs examined themselves and tendered the documents whereas defendants also examined five witnesses.

Mr. Ashwani Bakshi, learned counsel appearing on behalf of the appellants submitted that both the Courts below have erroneously non-suited the plaintiffs on account of not proving the fraud which was not only required to be pleaded but proved as per the provisions of Order 6 Rule 4 CPC and as well as provisions of Section 101 of Indian Evidence Act, 1872. No doubt, the Will was registered but no witnesses of the Will were examined. V.K.Singla, Advocate had been a lawyer of Joginder Singh in collusive decree and as well as of the appellants in the matrimonial proceedings against one of the husbands of the appellants and therefore, his testimony could not have been relied upon. The order of the Assistant Collector sanctioning the mutation regarding the land of village Aklia I and II had no binding force. The defendants though examined DW1 who brought on record the summons with regard to registration of the Will but other witnesses have not been examined. In such circumstances, he deemed to have died intestate, particularly, in respect of other property which was not subject matter of the decree.

I have heard the learned counsel for the appellants, appraised the judgments and decrees as well as record of both the Courts below and of the view that there is no force and merit in the submissions of Mr. Bakshi, for, it is settled law that even if both the witnesses have not been examined or not available, the concerned official of the Registrar examined, is the sufficient requirement of law. The aforementioned view of mine is derived from the ratio decidendi culled out in **Ved Mitra Verma Vs. Dharam Deo Verma 2014(15) SCC 578.**

Concededly, Joginder Singh died in the year 1995 and mutation was also sanctioned thereafter. No explanation has come forth in not filing the suit with promptitude as it was filed only in the year 2005. The plaintiffs failed to lead any evidence or the ingredients of Order 6 Rule 4 CPC except their own testimony which was not corroborated by the documentary evidence, thus, in my view, plaintiffs failed to discharge the onus.

In view of above, no ground for interference is made out.

Resultantly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

January 14, 2019
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No