

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

**RSA No.1522 of 2017 (O&M)
Date of decision:26.3.2019**

Birbal Dass and another ... Appellants

Vs.

Sheela Wanti and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Pritam Saini, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

The present Regular Second Appeal is directed against the concurrent findings of facts and law whereby the appellant-plaintiffs have not been successful in claiming the declaration to be owners of land to the extent of 1/8th share in equal shares regarding the estate of Kanshi Ram son of Devi Ditta as well as on the basis of the Will dated 19.03.1990 executed by Kimat Rai son of Sohan Lal and 1/9th share in the estate of Bhagwanti wife of Norata Ram by setting aside the judgment and decree dated 17.1.1990 passed in civil suit no.69-T of 10.04.1989 and as well as judgment and decree dated 15.3.1996.

It was alleged that NorataRam and Kanshi Ram were the owner of the land in question. Kanshi Ram died un-married and issueless, therefore, his estate devolved upon Norata Ram. Norata Ram was married with Bhagwanti and from the wedlock, Mathura Devi and Fateh Chand were

born. Norata Ram turned out his wife Bhagwanti from his house and contracted the second marriage with one Chameli Devi. The defendants are the children of Norata Ram and Chameli Devi and the plaintiffs are the sons of Fateh Chand. Kanshi Ram died prior to Mathura Devi and thus, after his death, Mathura Devi was entitled to 1/8th share in the estate of Kanshi Ram. Mathura Devi had one son namely Kimat Ram who stepped into her shoes and on 19.3.1990 executed a Will in favour of the plaintiffs qua his share. It was alleged that Kanshi Ram died on 29.06.1962. The judgment and decree in a suit filed by Fateh Chand was not binding upon them.

Defendants no.2 and 4 to 10 appeared and filed the written statement by contesting the suit and raised the objection of maintainability, res judicata and limitation.

The plaintiffs in support of the averments aforementioned examined eight witnesses and brought on record umpteen number of documents spanning from Ex.P1 to Ex.P18 and various other documents, whereas, the defendants examined one witness and brought on record the documentary evidence.

Mr. Pritam Saini, learned counsel appearing on behalf of the appellants submitted that both the Courts below have committed illegality and perversity in holding that suit was not maintainable but did not notice the fact that Kanshi Ram died on 29.06.1963, for, after his death, his grand daughter Mathura Devi who was alive at that time and died on 01.04.1963 could have succeeded to his estate and Kimat Ram being son would also and in view thereof, he executed the Will of 1990, therefore, the plaintiffs

claimed the right in the property. The judgment and decree assailed in the suit filed by Fateh Chand was not binding upon them as they were not party.

I am afraid the aforementioned arguments are not sustainable for the simple reason that suit was not maintainable and barred by res judicata, for, when Fateh Chand had filed the suit, the plaintiffs were major, in other words, it is not a case where the plaintiffs were minor and in those proceedings, it was held that Kanshi Ram died on 29.06.1963 i.e. post the death of Mathura Devi. The aforementioned judgment and decree could not have been set aside in the manner and mode as it had attained finality upto this Court in RSA No.1456 of 1996 decided on 09.04.1997.

As an upshot of my findings, arguments of Mr. Saini, have not been able to bring the case within the realm of illegality and perversity to form a different opinion than the one arrived at by the Courts below. No substantial question of law arises for adjudication of the present appeal.

Resultantly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

March 26, 2019

savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No