

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

**RSA No.170 of 2018(O&M)
Date of Decision: 16.01.2019**

Bakshish SinghAppellant
Versus
Sucha Singh and anotherRespondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Kawaljiyot Singh, Advocate
for the appellant.

RAJ MOHAN SINGH, J.(Oral)

CM No.363-C of 2018

For the reasons mentioned in the application, the same is allowed. Delay of 17 days in re-filing the appeal is condoned.

Main case

[1]. Plaintiff is in regular second appeal against the concurrent judgments and decrees passed by the Courts below in a suit for declaration and permanent injunction.

[2]. Declaration was sought in respect of suit land measuring 14 kanals 11 marlas on the basis of registered Will dated 28.12.1990 executed by father of the defendants. Plaintiff and defendant No.1 are brothers. Defendant No.2 is the sister of the plaintiff. Plaintiff sought declaration qua joint ownership of

half share on the basis of aforesaid Will. Mutation No.1910 was sanctioned on the basis of natural succession in favour of the legal heirs of Paras Ram. Plaintiff has assailed the aforesaid mutation as well. The sister sold her share in favour of defendant No.1 and mutation No.1911 was sanctioned in respect thereof.

[3]. In the written statement, the factum of Will was contested and the same was claimed to be forged and fabricated on the ground that the father had lost mental balance and was not in a fit state of mind. Though the plaintiff/appellant has examined Rajinder Kumar, deed writer as PW 1, attesting witness Rattan Singh as PW 2 and himself as PW 3, but the original Will could not be tendered in evidence before the trial Court, nor the application under Section 65 of the Evidence Act was filed.

[4]. Trial Court dismissed the suit. However, an application under Section 65 of the Evidence Act was filed before the Lower Appellate Court and the same was allowed. The said order was reversed by the High Court vide order dated 25.07.2017 passed in CR No.7571 of 2014 titled Sucha Singh Vs. Bakshish Singh and another.

[5]. As of now, the factum remains that neither the primary evidence was led by the plaintiff, nor secondary evidence was

permitted by the High Court at the instance of the plaintiff. Virtually, it is a case of no evidence so far as Will dated 28.12.1990 is concerned. In the absence of aforesaid evidence, indulgence even in application for additional evidence under Order 41 Rule 27 read with Section 151 CPC cannot be granted. CM No.689-C of 2019 cannot be considered to circumvent the order dated 25.07.2017 passed in CR No.7571 of 2014. In view of above, there is no scope to entertain CM No.689-C of 2019 and the same is accordingly dismissed.

[6]. Resultantly, no law point worth consideration is involved in the present appeal. The findings recorded by the Courts below are not the result of misreading of evidence, nor suffered with any perversity. The present appeal is accordingly dismissed in limine.

16.01.2019
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No