

RSA No. 3841 of 2018(O&M)

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

RSA No. 3841 of 2018(O&M)

Date of decision: 24.9.2019

Gurdeep Kaur

... Appellant

Versus

Jeet Kaur @ Nasib Kaur and another

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. J.K. Singla, Advocate
for the appellant.

ARUN PALLI, J. (Oral)

Suit filed by the appellant-plaintiff was dismissed by the trial court, vide judgment and decree dated 26.5.2016, and as even the appeal preferred against the said decree failed and was dismissed on 02.02.2018, the appellant is before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

The plaintiff prayed for a declaration that she was owner and in joint possession of 1/3rd share in the land owned by her mother Mukhtiar Kaur wife of Jarnail Singh in a joint khata, depicted in detail in the cause title of the plaint. As also for injunction, restraining the defendants from alienating any portion of the suit property in any manner.

Upon notice issued to the defendants, they caused appearance and filed written statement, disputing the claim of the plaintiff.

The trial court framed the issues arising out of the pleadings of the parties on 9.12.2015, and the matter was adjourned to 27.1.2016, for recording plaintiff's evidence, on deposit of diet money and furnishing list

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of witnesses. Concededly, neither did the plaintiff furnish the list of witnesses nor examined any witness on the adjourned date. However, on her request, the matter was still adjourned to 28.3.2016, for her evidence. But again, she failed to examine even a single witness and the matter was adjourned to 25.5.2016. However, the position was not any different even on 25.5.2016, as she again failed to lead and conclude her evidence. But yet again the matter was adjourned to 26.5.2016. Even on 26.5.2016, neither did she examine any witness, nor appeared herself to substantiate her claim. Thus, despite granting sufficient opportunity, the trial court was choice-less but to close the evidence of the plaintiff under Order 17 Rule 3 of the Code of Civil Procedure, and the suit was accordingly dismissed.

Likewise, the appellate court, upon consideration of the matter in issue, concurred with the conclusion recorded by the trial court, as in the absence of any evidence and even the plaintiff having failed to appear as her own witness, her claim remained unproved and was liable to be rejected.

Heard learned counsel for the plaintiff-appellant.

Learned counsel for the appellant relied upon a decision of this Court in **Municipal Committee, Loharu Vs. Jagdish Kumar and others, 2017 (2) RCR (civil) 568**, is wholly misplaced, as a bare reading of paragraph 6 of the judgment reveals that in the said case the appellant-plaintiff was not granted effective opportunity and on the first date itself, the court had granted last opportunity to the plaintiff to lead its entire evidence. I am afraid, such is not the position in the case at hands, as despite repeated opportunities, as demonstrated above, the plaintiff-appellant did not examine even a single witness. She herself never chose to appear as her own witness. Thus, the only and the inevitable conclusion that could be reached was: suit

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of the plaintiff was liable to be dismissed. Upon being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the findings recorded by both the courts were either contrary to the record or suffered from any material illegality.

No question of law, much less any substantial question of law, arises for consideration. The appeal being devoid of merit, is accordingly dismissed.

**(ARUN PALLI)
JUDGE**

September 24, 2019

AK Sharma

Whether speaking / reasoned:

YES

Whether Reportable:

YES/NO