

RSA-4356-2017 (O&M)

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

**RSA-4356-2017 (O&M)
Date of decision : 26.03.2019**

Taranjit Singh

... Appellant

Versus

Surjit Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. N.S. Dhillon, Advocate for the appellant.

AMIT RAWAL, J. (ORAL)

The appellant being legal heir of defendant No.1-Sher Singh, is in the present regular second appeal against the concurrent findings of fact, whereby the suit of the respondent-plaintiff for declaration claiming ownership and possession along with defendant Nos.2 and 3, to the extent of half share of the land situated in Village Mirzapur and Village Bhola and one house in *abadi deh*, along with consequential relief of possession, has been decreed by the trial Court and affirmed in appeal.

It was alleged that the plaintiff, defendant Nos.2 and 3, are the son, wife and daughter of Hari Singh, owning the property, aforementioned. Hari Singh, died on 25.02.1991, during his life time, executed a registered Will dated 09.02.1987, in favour of the plaintiff, defendant Nos.2 and 3, but the plaintiff came to know that defendant No.1, son of the brother of father of deceased-Hari Singh, obtained the mutation in his favour, therefore, the suit, aforementioned, was filed.

Defendant No.1 opposed the suit and denied Joginder Kaur-defendant No.2, to be legally wedded wife of Hari Singh, much less, children. In the absence of same, stake the claim being collateral

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i.e. Class-II heirs.

The plaintiff, in support of the pleadings examined four witnesses and brought on record many documents to prove the execution of the registered Will. On the other hand, the defendant examined three witnesses.

Learned counsel appearing on behalf of the appellant-defendant submitted that the plaintiff, defendant Nos.2 and 3, failed to prove themselves to be legally wedded wife and children of Hari Singh. No evidence, as per Section 50 of the Indian Evidence Act, has been led, therefore, the estate of Hari Singh, was liable to be devolved as per the Schedule of Section 8 of the Hindu Succession Act.

I am afraid the aforementioned argument is not sustainable as the contents of the Will mentioned that the plaintiff, defendant Nos.2 and 3, are the son, wife and daughter. The aforementioned unimpeached evidence has not been belied, through any direct and cogent evidence, except oral testimony, even the Court witnesses, were also examined, who testified the claim of the plaintiff.

As an upshot of my finding, I do not subscribe to the submissions of Mr. Dhillon, to form a different opinion than the one already arrived at by the Courts below, much less, no substantial question of law arises for determination. Accordingly, the second appeal is dismissed.

26.03.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	Yes/ No
Whether Reportable	Yes/ No