

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

RSA No.5887 of 2017 (O&M)

Date of decision:31.01.2019

Harvinder Sigh and others

... Appellants

Vs.

Parupkar Singh (since deceased) through LRs and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Sandeep Bansal, Advocate
for the appellants.

AMIT RAWAL J.

C.M.No.18584-C of 2018

The application is allowed, subject to all just exceptions. Legal representatives of Parupkar-respondent no.1 as mentioned in the application are ordered to be brought on record for the purpose of prosecuting the present appeal.

RSA No.5887 of 2017 (O&M)

The present Regular Second Appeal is directed against the concurrent findings of fact and law whereby suit of appellant-plaintiffs for declaration of having become owners in possession of land measuring 33 kanals 14 marlas by challenging the mutation bearing no.4515 to be illegal, null and void with a consequential relief of permanent injunction, has been dismissed by the trial Court and affirmed in appeal.

The plaintiffs sought the declaration, aforementioned, on the premise that they were the nephews of Paravtar Singh (sons of brother of the deceased Paravtar Singh). In fact, they were three brothers Malkiat Singh, Parupkar Singh and Paravtar Singh. Paravtar Singh was un-married and issueless and died on 13.09.1994. Mutation was sanctioned in favour of all legal heirs and during his life time, executed a Will dated 26.12.1993 without any pressure bequeathing the property in favour of the plaintiffs.

Defendants no.2, 3, 5 and 6 were proceeded against ex parte. Defendant no.4 filed written statement and thereafter, was proceeded against ex parte, whereas, defendants no.1 and 7 filed the joint written statement and opposed the suit and submitted that Paravtar Singh was the husband of defendant no.7-Sumitra Devi and was serving as professor at Kurukshetra University. He died intestate at Vikas Puri, New Delhi. Thus, Malkiat Singh and Parupkar Singh had no concern with the property. Defendant no.7 had given a power of attorney to pursue his case to Parupkar Singh. Paravtar Singh never resided with the family of Malkiat Singh. In the Insurance Policy dated 11.7.1968, name of defendant no.7 was mentioned as nominee of Paravtar Singh. The Manager of LIC had also issued a letter in the name of Sumitra Devi after demise of Paravtar Singh for taking benefit of policy.

Since the parties were at variance, the trial Court framed 07 (seven) issues. The plaintiffs examined seven witness and brought on record Ex.P1 to P42. On the other hand, defendants examined four witnesses and brought on record various documents. In rebuttal, the plaintiffs tendered

into evidence Ex.P44 to Ex.P60.

Mr. Sandeep Bansal, learned counsel appearing on behalf of the appellant-plaintiffs submitted that judgments and decrees of the Courts below are not sustainable in the eyes of law as witnesses of the Will had died. The plaintiffs wanted to examine the relatives as per the provisions of Section 69 of Indian Evidence Act by invoking the provisions of Order 41 Rule 27 CPC as their evidence is root of the matter but the application has erroneously been dismissed by the Lower Appellate Court. No proper issues were framed. The evidence of Malkiat Singh-PW1 has erroneously been rejected without noticing the fact that he was a real brother of Parupkar Singh. It has been proved by the Scribe-Gurmukh Singh that in his presence and of the attesting witnesses, the testator had signed the Will, thus, there was compliance of Section 63(c) of Indian Succession Act. Scribe also stated that he made entry in the register but the register was destroyed in the fire. If these facts had been looked into collectively much less application for addition evidence, the suit was liable to be decreed.

During the course of hearing, attention of this Court was drawn to the order dated 29.03.2017 whereby an application for framing the additional issue was submitted before the Lower Appellate Court as no issue with regard to Will was framed.

It was pointed out that there was alteration in the testimony of witness-Malkiat Singh with regard to word 'galat' and complaint was made to the District Judge, inquiry was conducted and it was found that judicial record was tempered.

I have heard the learned counsel for the appellant-plaintiffs, appraised the judgments and decrees of the Courts below and of the view that there is no force and merit in the submissions of Mr. Bansal.

The plaintiffs miserably failed to comply with the provisions of Section 69 of Indian Evidence Act as admittedly, witnesses of the Will died. It was obligatory to examine their relatives in order to identify their signatures/thumb impressions on the Will. It is too late in a day to seek indulgence of the Lower Appellate Court by invoking the provisions of Order 41 Rule 27 CPC. Non-framing of issue with regard to Will, once the parties were alive to the situation and had led evidence is insignificant. It appears that plaintiffs wanted to fill up the lacunae and evidence by having de-novo trial. Such procedure adopted is totally un-warranted, for, in the absence of Will, the mutation had been sanctioned in favour of all the co-laterals but the Lower Appellate Court did not accept defendant no.7 to be widow of Paravtar Singh as no evidence under Section 50 of Indian Evidence Act, was led. Once the appellant-plaintiffs failed to comply with the provisions of Section 68 of Indian Evidence Act, mutation considering the death of Paravtar Singh intestate is most appropriate.

As an upshot of my findings, I do not find any illegality and perversity in the concurrent findings of fact and law, much less no substantial question of law arises for adjudication of the present appeal.

Resultantly, the regular second appeal is dismissed.

(AMIT RAWAL)
JUDGE

January 31, 2019
savita

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