

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

RSA No.5919 of 2017 (O&M)

Date of decision:02.04.2019

Iqbal Singh and another

... Appellants

Vs.

Harbhajan Kaur and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Rohit Ahuja, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

The present regular second appeal at the instance of the appellant-plaintiffs who have not been successful before both the Courts below in claiming the declaration of ownership qua estate of Kartar Singh on the basis of the Will dated 12.01.1962 in a suit filed on 13.03.2008.

The plaintiffs alleged that one Wasava Singh had five children i.e. four sons and one daughter, Amar Kaur, Amar Singh, Sardara Singh, Karam Singh and Kartar Singh. The plaintiffs are the children of Amar Singh and Sardara Singh. The dispute was with regard to the estate of Kartar Singh who was missing and issueless. Defendant no.1-Harbhajan Kaur, was arrayed on account of the fact that in the year 1998, in the mutation proceedings, she asserted herself to be daughter of Kartar Singh which culminated into final order dated 25.01.2008, Ex.P5/3 by the last revenue Court.

Defendant no.1 opposed the suit and alleged herself to be daughter of Kartar Singh and relied upon the orders of revenue Court which were in her favour as the share of Kartar Singh was mutated on account of relation with Kartar Singh.

The plaintiffs led extensive evidence and examined PW1-Joginder Singh, PW2-Jaswant Rai and PW3-Wadhawa Singh to identify the signatures of one of the attesting witnesses whereas defendants also led evidence and brought on record Ex.D1.

Mr. Rohit Ahuja, learned counsel appearing on behalf of the appellants submitted that though ingredients of Section 68 of Indian Evidence Act and Section 63(c) of Indian Succession Act have not been complied with but PW2-Jaswant Rai identified the signatures of one of the attesting witnesses. This is the sufficient requirement of law as per the provisions of Section 69 of Indian Evidence Act. If at all, Kartar Singh had any daughter, he could have mentioned it as execution of Will is always deviation from the line of succession. As per school register, defendant no.1 was born in the year 1947. No explanation has come forth in asserting the right in the property. In fact, no evidence has been led as per the provisions of Section 50 of Indian Evidence Act.

I have heard the learned counsel for the appellants, 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. Ahuja as on going through the contents of the plaint, it has come on record that it was the plaintiffs who had not been successful before the revenue Court asserting the right in the

civil Court under Section 9 of Code of Civil Procedure and one of the challenge was that defendant no.1 was not the daughter of Kartar Singh. Onus was thus rebuttable in case affirmative evidence in support of the case had been led. No witness as required under Section 50 of Indian Evidence Act, has been examined. In such circumstances, argument of Mr.Ahuja, that defendants failed to lead evidence would be not able to cut ice.

It is a matter of record that proceedings before the Financial Commissioner had attained finality which have not been challenged.

As an upshot of my findings, arguments of Mr. Ahuja, 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

April 02, 2019
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No