

RSA No.61 of 2017 (O&M)

{1}

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

RSA No.61 of 2017 (O&M)

Date of decision:14.01.2019

Amarjit Kaur

... Appellant

Vs.

S.Sucha Singh and others

... Respondents

RSA No.856 of 2017 (O&M)

Amarjit Kaur

... Appellant

Vs.

S.Sucha Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. J.S.Khattar, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

This order of mine shall dispose of two Regular Second Appeals bearing Nos.61 and 856 of 2017.

RSA No.61 of 2017 is arising out of dismissal of civil suit bearing No.233 of 2009 at the instance of the appellant-plaintiff and its affirmation in respect of suit property situated in village Bhoewal, Tehsil Baba Bakala, District Amritsar.

RSA No.856 of 2017 is arising out of dismissal of civil suit bearing No.96 of 2010 at the instance of the appellant-plaintiff and its affirmation in respect of suit property situated in village Chananke, Tehsil

Baba Bakala, District Amritsar.

The plaintiff in both suits sought the declaration of having acquired the status of co-owner to the extent of 1/4th share in respect of aforementioned pieces of land situated in two different villages being grand daughter of Harnam Singh and Harnam Kaur from maternal side.

It was alleged that Pritam Kaur was the daughter of Harnam Singh and Harnam Kaur who pre-deceased her father and mother. She died in 1968. She was married with one Charan Singh and out of their wedlock, plaintiff was born. After the death of Harnam Singh, mutation regarding inheritance was required to be sanctioned in favour of the plaintiff alongwith Harnam Kaur as the plaintiff was also Class I heir. On demise of Harnam Kaur, plaintiff was sole surviving legal heir of Harnam Singh and Harnam Kaur, therefore, in such circumstances, defendants had no right to obtain the mutation on the basis of inheritance of Harnam Singh and Harnam Kaur, therefore, mutation 226 and 570 were erroneous, illegal and void in the eyes of law.

Defendants opposed the suit and raised the objection qua maintainability. On merit, it was stated that Harnam Singh, deceased was co-sharer. It was denied that Pritam Kaur was the daughter of Harnam Singh and Harnam Kaur. They propounded the Will dated 18.10.1963 of Harnam Singh and 25.02.1982 of Harnam Kaur. It was disclosed that Joginder Singh, brother of Harnam Singh, filed a suit challenging the Will executed by Harnam Kaur and on 4.6.1986, suit was dismissed.

The plaintiff in support of the aforementioned pleadings, examined three witnesses and brought on record Ex.P1 to Ex.P10, whereas defendants examined eleven witnesses and brought on record the documentary evidence.

Mr. J.S.Khattar, learned counsel for the appellant submitted that once the mutation, Ex.P1 reflected the name of plaintiff, subsequent change in the revenue record was erroneous. The defendants examined only one witness of the Will and therefore, there was no compliance of the provisions of Section 63(c) of Indian Succession Act. The school leaving certificate established the plaintiff to be daughter of Pritam Kaur and Charan Singh.

I have heard the learned counsel for the appellant, appraised the judgments and decrees as well as record of both the Courts below and of the view that there is no force and merit in the submissions of Mr. Khattar.

In view of denial of Pritam Kaur to be daughter of Harnam Singh and Harnam Kaur, the onus heavily laid upon the plaintiff to establish that she was born out of the wedlock of Pritam Kaur and Charan Singh by leading evidence as per the provisions of Section 50 of Indian Evidence Act. Even the school leaving certificate has not been proved in accordance with law as it is remained as Mark A, whereas, the defendants have placed on record the judgment and decree, wherein, Will of Harnam Kaur was upheld and though they have also examined DW4 and DW5, witnesses of Will of Harnam Singh dated 18.10.1963. No contrary evidence has been led, particularly when the aforementioned Will was registered document.

RSA No.61 of 2017 is also accompanied by an application seeking condonation of delay of 210 days in filing the appeal. The explanation given in the application is not justified.

Resultantly, the appeals are dismissed on limitation as well as on merits.

January 14, 2019
savita

(AMIT RAWAL)
JUDGE

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