

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

**RSA No.887 of 2017 (O&M)
Date of decision:01.02.2019**

Gurdarshan Singh @ Darshan Singh (since deceased) through LRs
... Appellants

Vs.

Udai Karan (since deceased) through LRs and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Baldev Singh Sodhi, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

C.M.No.1963-C of 2017

For the reasons stated in the application which is duly supported by an affidavit, delay of 80 days in re-filing the appeal is condoned.

C.M. stands allowed.

RSA No.887 of 2017 (O&M)

The present Regular Second Appeal is directed against the concurrent findings of fact and law whereby suit of the appellant-plaintiffs for declaration to the fact that judgment and decree dated 06.04.1970 passed in civil suit no.328 with regard to land measuring 183 kanals 17 marlas passed by Civil Court and the mutation thereafter, including the Will

propounded by the defendants was illegal, null and void as the plaintiffs had a right of inheritance qua estate of Jalour Singh being their father, has been dismissed.

It was alleged that Kahan Singh had one son Jalour Singh, who married Harpal Kaur. Out of their wedlock, Gurdarshan Singh, plaintiff and Uttar Singh were born. Kahan Singh during his life time had executed a decree in favour of Jalour Singh but since the plaintiffs are the children of Harpal Kaur and Jalour Singh, had become the owners. On his death, in the absence of proof of the Will and second marriage being void, the plaintiffs had a right to inherit the estate of Jalour Singh.

The defendants opposed the suit and admitted that Kahan Singh was grandfather of plaintiff no.1 and great grandfather of plaintiffs no.3 and 4 as their father Jang Singh, was the father of plaintiff no.1 and grandfather of plaintiffs no.3 and 4. The pedigree table shown in the plaint was wrong as they had no concern with the estate of Jalour Singh. The plaintiffs were not stated to be born out from the wedlock of Jalour Singh and Harpal Kaur and propounded the Will of Jalour Singh in their favour.

The plaintiffs in support of the aforementioned pleadings examined Jalandhar Singh as PW1, Charat Singh as PW2, Naseeb Kaur as PW3, Baljit Singh as PW4 and tendered into evidence various documents, Ex.P1 to Ex.P27 i.e., mutations, death certificate of Uttar Singh, jamabandies, voter list etc. On the other hand, defendants examined ten witnesses and brought on record various documentary evidence.

In rebuttal, the plaintiffs examined PW4, PW5 and PW6 and tendered into evidence Ex.P28 to Ex.P30.

Mr. Baldev Singh Sodhi, learned counsel appearing on behalf of the appellants submitted that testimony of PW1 and PW2 proved compliance of the provisions of Section 50 of Indian Evidence Act, to establish that Jalour Singh had performed a kareva marriage with Harpal Kaur, even the voter list qua the parentage was brought on record but the Courts below have gravely erred in not noticing the aforementioned fact. The Will has also not been produced. In such circumstances, Jalour Singh deemed to have died intestate and being sons even from second marriage had a right in the property by birth.

I have heard the learned counsel for the appellants, 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. Sodhi, for, PW1 stated that he has seen the marriage but did not know the date of marriage. PW2 stated that he did not attend the said kareva marriage but the same was attended by Jagraj Singh and Wariam Singh, who have not been examined. On the other hand, the documents, Ex.D1, Ex.DW2/A, Ex.DW2/B, Ex.D4, Ex.D3, Ex.D5, Ex.D6, Ex.D7 showed Harpal Kaur to be the wife of Jang Singh. The plaintiffs failed to prove that Harpal Kaur was the wife of Jalour Singh. In the absence of any marriage, the plaintiffs did not have any right to claim regarding the devolution of interest vis-a-vis estate of Jalour Singh. No revenue excerpt has been placed on record to

prove the nature of the property to be ancestral.

The findings of fact and law cannot be said to be suffering from illegality and perversity, much less no substantial question of law arises for adjudication of the present appeal.

Resultantly, the regular second appeal is dismissed.

	(AMIT RAWAL)
	JUDGE
February 01, 2019	
savita	
Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No