

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

RSA No.1566 of 1994

Date of decision: 5th March, 2020

Rameshwar Singh & others

... Appellants

Versus

Hakam Singh & others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Amar Vivek, Advocates for the appellants.

Mr. Brijeshwar S. Jaswal, Advocate for respondents.

FATEH DEEP SINGH, J.

During the course of hearing arguments, it has transpired that the suit by the plaintiffs (now respondents) against the present appellants Rameshwar Singh and others (then defendants) wherein the plaintiffs have based their claim over a Will dated 10.12.1976 Ex.P1 contending that Rattan Singh testator of this Will had died on 24.10.1985 and that Rattan Singh having died a bachelor and thus issueless was being served by the plaintiffs and defendants and out of which love and affection the registered Will has come about in their favour. However, the defendants have denied this plea and claimed that on account of being an intestate death of Rattan Singh mutation of inheritance of the deceased was got sanctioned by the defendants on 28.10.1986 and therefore, claim and counter-claim by the two sides have come about on the basis of which the

plaintiffs filed the suit for declaration to be the owners in equal shares as well as joint possession etc.

The trial Court had framed following issues:-

1. Whether the description of the property is mentioned wrongly in the plaint? OPD
2. Whether the plaintiffs are estopped from filing the present suit from their act and conduct? OPD
3. Whether the suit is not maintainable in the present form? OPD
4. Relief.

Thus, from which it is apparent that the claim of the plaintiffs and the opposition by the defendants was over the very legality and validity of the Will dated 10.12.1976 and subsequent right to ownership and possession of the property, and which important issue the trial Court omitted to frame nor adjudicated upon such contentious stands of the two sides which was essential for judicious adjudication.

This Court in the light of peculiar situation, exercising its power under Order 41 Rule 25 CPC frames the following issues:-

- 3A. Whether deceased Rattan Singh executed a legally valid registered Will dated 10.12.1976, if so, to what effect? OPP

3B. Whether the plaintiffs are entitled to decree of possession of the suit land on the basis of the registered Will dated 10.12.1976, if so, to what share and extent?
OPP

In the light of what has come across to this Court, there has been virtual non-determination of material question of fact which was essential to be adjudicated for comprehensive judicious decision on the case and therefore, the matter is referred back to the trial Court directing if necessitated to take additional evidence on these issues so framed above and try and proceed with the issues, and return along with the report thereon to this Court within a period of two months the parties put in appearance before the Court. The parties through their counsel are directed to appear before the trial Court on 28.04.2020. Office to complete the records.

(FATEH DEEP SINGH)
JUDGE

March 5, 2020

rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No