

RSA-1396-2019(O&M) 1

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

**RSA-1396-2019(O&M)
Date of decision:12.03.2020**

Chamkaur Singh etc.

.....Appellants

Versus

Manjit Kaur (Deceased) through LRs

.....Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- None for the appellants

ANIL KSHETARPAL, J.

In the present appeal, the plaintiffs-appellants have filed the Regular Second Appeal against concurrent finding of facts arrived at by the Courts below while dismissing suit filed with following caption:-

“Suit of declaration to the effect that the plaintiffs are owners in possession of the land detailed below:-

A. 1/3 share each in the extent of 1/9th share in the land bearing Khasra Nos.196/15, 195/16, 195//25/1, 195//25/2, 196//5, min south 195//18, 195//22/2, 195//23, 196//5 min east as per Khewat no.66, Khatauni No.77 to 80,

B. 4196/12580 share i.e to the extent of 4196/37740 each out of land bearing Khasra Nos.194//26, 194//8, 194//9, 194//10/1, 194//10/2/1,

195//19, 195//22/1, 194//13, 194//18, 194//22, 194//23, 197//1, 197//2, 197//12, 194//19, 194//21, 195//6, 195//14, 196//4, 196//7, 196//7, 196//3/2, 195//17, 195//24/1, 195//24/2, as per khewat No.67, Khautani No.81 to 87 vide jamabandi for the year 2006-07 situated in the area of village Dhudike-2, Tehsil and District Moga.

Alongwith consequential relief of permanent injunction restraining the defendants from interfering with the peaceful, lawful possession of plaintiffs over the above said land ejecting, dispossession them out of same and also from alienating, transferring, disposing of said land illegally, unjustly, without due course of law and the alleged mutation No.1303 sanctioned in favour of defendants is illegal, void and liable to be set aside.”

Basically plaintiffs who are sons of Late Smt. Nihal Kaur claimed the property on the basis of a testamentary disposition dated 24.2.2002. Late Smt. Nihal Kaur died on 26.12.2008. After her death, the mutation was sanctioned in favour of all the children. The defendants are daughters of Smt. Nihal Kaur. Defendant no.1 contested the suit and pleaded that the aforesaid Will, as set up by the plaintiffs, is progeny of forgery. It is claimed that Smt. Nihal Kaur was illiterate lady and did not know how to sign, although, the alleged Will is allegedly signed by Late Smt. Nihal Kaur. Both the Courts on appreciation of evidence have

found that plaintiffs have failed to prove that Late Smt. Nihal Kaur ever signed any document. Before the Courts below, the defendants produced on record documents Ex.D-1 to D-16 proving that Smt. Nihal Kaur used to thumb mark. These documents have been produced by Sharanjit Singh, Clerk of District Social Security Office, Moga from where late Smt. Nihal Kaur used to draw her pension. Still further, both the attesting witnesses were examined, however, Darshan Singh did not come forward for cross examination. Jasvir Singh, another attesting witness has admitted that he has never seen Smt. Nihal Kaur signing. It has also come on record that beneficiary of the Will also participated when the alleged Will was executed. When the mutation was sanctioned, the plaintiffs never produced the aforesaid Will. It is also admitted that Smt. Nihal Kaur was having equal love for all her children.

Since counsel for the appellants has chosen not to appear inspite of opportunity given, therefore, this Court has gone through the grounds of appeal. Learned counsel for the appellants has proposed following questions of law:-

“i) Whether the judgment and decrees of both the courts below are sustainable in the eyes of law?

ii) Whether or not the judgment and decrees of both the courts below are passed upon plausible evidence led by the parties?

iii) Whether the courts below have erred in ignoring the evidence led by the appellants to

prove their title in the land in dispute?”

It is apparent that the alleged questions of law as proposed are not questions of law. Still further in the grounds of appeal, attention of the Court has not been drawn to any substantive mis-reading or non-reading of evidence or error of law or procedure.

Keeping in view the aforesaid facts, there is no ground to interfere. Hence, dismissed.

12.03.2020
rekha
Whether speaking/reasoned
Whether Reportable

(ANIL KSHETARPAL)
JUDGE
Yes / No
Yes / No