

RSA-4511-2011(O&M)

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

RSA-4511-2011(O&M)

Date of decision: 13.01.2020

Dalip Singh and others

.....Appellants

Versus

Karnail Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.Manvinder Dalal, Advocate for the appellants

Mr. V.K.Jindal, Sr. Advocate with

Mr. Gopal Soni and

Ms. Janya Sirohi, Advocates for the respondent

ANIL KSHETARPAL, J. (ORAL)

CM-13085-C-2011

Allowed as prayed for, subject to all just exceptions. Legal heirs of Sh.Jagir Singh as mentioned in paragraph 2 are impleaded as party to the present appeal.

Main case

Plaintiffs-appellants are in Regular Second Appeal against concurrent finding of facts arrived at by the Courts below, while dismissing the suit filed by them. The plaintiffs claim share in the property left by Late Smt. Ishar Kaur, who died in the year 1996. Plaintiffs claim that Smt. Ishar Kaur was initially married with Khazan Singh and plaintiffs (children) were born from the wedlock of Khazan

Singh and Smt. Ishar Kaur. After the death of Khazan Singh, Smt. Ishar Kaur is said to have re-married with Gian Singh. After the death of Gian Singh, certain property came to the share of Smt. Ishar Kaur. On her death, the inherited property from Gian Singh, was mutated in favour of Karnail Singh (respondent herein) born from the wedlock of Smt. Ishar Kaur and Gian Singh.

Defendants contested the suit and claimed that Smt. Ishar Kaur was neither married to Khazan Singh nor the plaintiffs are her children. Both the Courts on appreciation of evidence have found that the plaintiffs have failed to prove that they are children of Smt. Ishar Kaur and Khazan Singh.

Learned counsel appearing for the appellants has drawn attention of the Court to an application filed under Order 41 Rule 27 CPC seeking permission to lead additional evidence. He submitted that plaintiffs have been able to procure certain documents of area which now forms part of Pakistan, for proving that Smt. Ishar Kaur was initially married to Khazan Singh. He, hence, submitted that the application be allowed.

By way of additional evidence, appellant seeks permission of the Court to lead additional evidence. Report of Patwari in Form No.36 containing a pedigree table based on Jamabandi for the year 1945-46 is Annexure A-1. Document Annexure A/2 is a communication sent by the office of Assistant Record Officer. These documents are not per se admissible. These documents are required to be proved by leading evidence. Smt. Ishar Kaur died in the year 1996 and mutation of her

inheritance was sanctioned in the year 1997. The suit in question was filed in the year 2005 i.e after the period of 8 years. The suit filed by the plaintiffs was dismissed in the year 2008. Even the first appeal filed by the plaintiffs was dismissed in the year 2011. No plausible reason has been given as to why the evidence which is now sought to be produced, could not be produced during the pendency of the suit or before the First Appellate Court. In such circumstances, this Court is not inclined to grant permission to lead additional evidence in view of the facts noted above. Application under Order 41 Rule 27 CPC for permission to lead additional evidence can be allowed only in accordance with the parameters laid down in Order 41 Rule 27 CPC. Order 41 Rule 27 (aa) provides that if the party establishes that notwithstanding on exercise of due diligence such evidence was not within his knowledge. In the present case, plaintiffs have failed to fulfill the aforesaid requirement.

Keeping in view the aforesaid facts, the application for additional evidence is rejected.

In the absence of evidence to the effect that Smt. Ishar Kaur was ever married to Khazan Singh and the plaintiffs were born from the wedlock of Khazan Singh and Smt. Ishar Kaur, the Courts below have correctly dismissed the suit. Hence, no ground to interfere is made out.

Dismissed.

13.01.2020

rekha

Whether speaking/reasoned

Whether Reportable

(ANIL KSHETARPAL)

JUDGE

Yes / No

Yes / No