

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

RSA-696-1994 (O&M)
Date of decision: 18.05.2022

Babu (deceased) through L.Rs

....Appellants

Versus

Lehmbar Singh and others

..Respondents

CORam: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms.Neha Jain, Advocate for
Mr. P.S.Bawa, Advocate for respondent no.1

ANIL KSHETARPAL, J (Oral)

The plaintiff filed a suit for grant of decree of declaration to the effect that he is owner in possession of the land measuring 2 kanals and 9 marlas located in village Muggo Patti. He also claims that defendant no.1 and 5 to 7 have no right, title or interest in the property and the Will dated 20th March, 1978 alleged to be executed by late Sh. Milkhi son of Sh. Raunak, is a bogus and fictitious document. He also prayed for relief of possession as well as division of property by meets and bounds. He also sought declaration that he is the owner in possession of half share left by late Sh. Milkhi son of Raunak. The plaintiff filed the suit, primarily, against his own children. Learned trial court has drawn a pedigree table to depict the inter se relationship between the parties, which is extracted as under:-

respect to the Will dated 6 September, 1981 it has been observed that the same has already been proved in a previous litigation when the defendants were brought on record as legal representatives of late Sh. Milkhi Ram.

Learned counsel representing the appellants contends that such observations of the First Appellate Court, are erroneous because while deciding the application for bringing on record the legal representatives of the deceased, the court did not finally decide the issue. It has been decided on the basis of the averments made in the application, which is normally supported by way of an affidavit.

Per contra, learned counsel representing the respondents contends that the judgment passed by the First Appellate Court is unsustainable because the court has failed to decide the application for permission to lead additional evidence.

The inter se relationship between the parties is evident from the pedigree table, the correctness where of is not disputed by the learned counsel representing the parties. It is an unfortunate litigation between the father and his children. Uncle of the children has bequeathed the property in favour of his nephews, whereas, their father is disputing the correctness thereof.

Undisputedly, the application filed for permission to lead additional evidence has not been decided. The First Appeal is in fact, rehearing of the suit on merits. The court is required to reappraise the entire evidence. The First Appellate court should

have at least decided the application for additional evidence. Hence, the judgment passed by the First Appellate Court is set aside and the matter is remitted back to the Court to decide the application for permission to lead additional evidence and thereafter, proceed with the matter.

The parties through their respective counsels are directed to appear on 31.05.2022 before the First Appellate Court.

Disposed of.

All the pending miscellaneous applications, if any, are also disposed of.

18.05.2022

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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No