

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

SAO No.86 of 2018 (O&M)

DATE OF DECISION : 28.03.2022

Raj Bala

.....Appellant

versus

Ishwar and others

.....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Kul Bhushan Sharma, Advocate for the appellant

Mr. Ashish Yadav, Advocate for respondent Nos.1 & 2

..

ALKA SARIN, J. (Oral):

The present second appeal against order has been filed challenging the order dated 27.08.2018 passed by the lower Appellate Court setting aside the judgment and decree passed by the Trial Court and remanding the case back for deciding it afresh on merits.

Learned counsel for the plaintiff-appellant would contend that the judgment and decree has been set aside primarily on the ground that the Trial Court has not returned any finding qua issue No.4, which reads as under :

*“4. Whether the will dated 31.08.2007 and
subsequent mutation no.1478 is legal and valid?
OPD”*

Learned counsel for the plaintiff-appellant states that the Will had been challenged in the plaint filed by the plaintiff-appellant as being a false and fabricated document. Learned counsel submits that now the plaintiff-appellant gives up her claim qua the Will and does not seek to challenge the Will.

Learned counsel for the parties are *ad idem* that the order of the learned lower Appellate Court may be set aside and the lower Appellate Court be directed to decide the appeal afresh, on merits, on the basis of the statement made by the learned counsel for the plaintiff-appellant in Court today to the effect that the plaintiff-appellant gives up the challenge qua the Will.

In view of the above, the order dated 27.08.2018 is set aside and the lower Appellate Court is directed to decide the matter afresh, on merits, on the basis of the pleadings and evidence on the record expeditiously.

Disposed off.

(ALKA SARIN)
JUDGE

28.03.2022
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NOTE:

Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO