

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

The said argument of the learned counsel for the appellant has to be considered keeping in view the complete statement of DW-2. It is a conceded position that in the affidavit filed in the examination-in-chief,

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record that the appellant had either put any question to DW-2 to show the original Will or any question that the original Will does not exist. The only question put to DW-2 was as to where he has seen the said Will in question which has been replied that the same was seen by him on the day of the testimony in the chamber of a lawyer. The Courts below in their wisdom, has appreciated the said fact to mean that the original Will was seen by DW-2 and has proved the same. The findings recorded by the Courts below by interpreting the said affidavit given by DW-2 in a particular manner, cannot be treated as arbitrary and illegal especially when, there was due opportunity to with the appellant to ask the said defence witness to show them the original Will during the cross-examination, which question was never put to the said witness. Hence, now turning around to interpret the evidence to mean that the original Will was not in Court, cannot be accepted.

The second argument of the learned counsel for the appellant is that there is no order passed by the Court that the original Will is seen and then returned back which shows that the original Will was never produced. It is a matter of fact that the certified copy of the original Will has been signed by the Court and taken on record. Concededly, no objection was ever taken by the appellant at the time when the certified copy was taken that the same has been taken on record without the production of the original Will. Once, no such objection was taken by the appellant at the time when the certified copy was taken on record by the Court, now at the regular second appeal stage, the appellant cannot be allowed to contend that the Court never passed an order that the original

Will was seen before taking on record the certified copy of the Will.

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The other argument which has been raised by the learned counsel for the appellant is that the gram panchayat is the owner of the land in question which fact has not been taken into account by the Courts below. It may be noticed that no claim was made by the plaintiffs against the gram panchayat. Further, in case, the gram panchayat is aggrieved, in any manner qua the suit property, they will have their own remedy, in case they are aggrieved in any manner. Further, by raising the said argument, nothing has been shown, how the appellants are prejudiced because of non-impleading of the gram panchayat in the proceedings.

No other point was argued.

Keeping in view of the above, no substantial question of law arises in the present appeal for determination of this Court, especially when no perversity in the findings of the Courts below have been pointed out qua the evidence or the facts from the above, which need any interference of this Court in the present second regular appeal.

In view of the above discussion, the present regular second appeal is dismissed.

CM-3872-2023

Application also stands dismissed.

24.04.2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No