

Neutral Citation No.2023:PHHC:047520

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-2301-1991

Date of Decision: 29.03.2023

Reserved on: 24.03.2023

Sampuran Singh (since deceased) through his
Legal representatives and another ... Appellants

Versus

Bachni ... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Argued by: Ms. Harveen Kaur, Advocate,
for the appellants.

Mr. Jaskirat Singh Arora, Advocate,
for the respondent.

MANISHA BATRA, J

1. The instant appeal has been preferred challenging the judgment and decree dated 03.05.1990 passed in Civil Appeal No.77 of 1988 titled as *Sampuran Singh and another v. Bachni* whereby the judgment and decree dated 27.05.1988 passed in Civil Suit No.431 of 1985 titled *Sampuran Singh and others v. Bachni* thereby dismissing the suit had been upheld.

2. For the sake of convenience, the parties shall be referred to as per their original nomenclature as given in the suit.

3. The brief matrix of the case is that the aforementioned suit had been filed by the plaintiffs on the averments that Mihan Singh @ Mehma Singh who was real brother of the plaintiffs No.1 and 2 was co-sharer to the extent of 1/3rd share in the agricultural land detailed out in

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the head note of the plaint (hereinafter to be mentioned as the “disputed land”). In June 1970, the joint properties of the plaintiffs Nos.1, 2 and Mihan Singh were partitioned by virtue of a family settlement and thereby, the disputed land had fallen to the share of plaintiffs No.1 and 2 wherein they constructed a house and the house which has been shown in the site plan annexed with the plaint had fallen to the share of Mihan Singh (for short “disputed house”). Mihan Singh was unmarried and issueless. The plaintiff No.3 Labh Singh who was son of plaintiff No.1 used to serve Mihan Singh during his life time and being pleased with the services so rendered by the plaintiff Labh Singh, Mihan Singh had executed a Will in his favour on 20.05.1984 with sound disposition of mind. The said Will had been duly attested by the respectables of the village. Sh. Mihan Singh died on 27.12.1984 and after his death, in view of the Will dated 20.05.1984, plaintiff No.3 became owner in possession of the disputed house and he was already in possession of the same due to the fact that Mihan Singh used to reside with him. It was pleaded that plaintiffs No.1 and 2 had already become co-owners of the disputed land in view of family settlement, however, even otherwise after the death of Sh. Mihan Singh, they being the only class-1 legal heirs of the deceased had inherited to his estate and had become co-owners of the same after his death.

4. It was further pleaded that Sukh Ram son of Narain Dass resident of Village Baroti District Ropar who was husband of the defendant was having friendly relations with Sh. Mihan Singh and due to that the defendant used to visit Mihan Singh during his life time. It was alleged that the defendant was not wife of Mihan Singh and was rather having three

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children from the loins of Sukh Ram. However, in order to grab the property of Mihan Singh and to cause wrongful loss to the plaintiffs, she had started claiming herself to be the wife of Mihan Singh. After his death, she in connivance with revenue authorities had even got the mutation of inheritance of Mihan Singh entered in her favour and on the basis of the same, she had started claiming ownership over the disputed properties. The plaintiffs, therefore, prayed for passing a decree for declaration to the effect that the plaintiffs No.1 and 2 were joint owners in possession of the disputed land on the basis of family settlement arrived at between Sh. Mihan Singh and themselves in June 1970 and further that the plaintiff No.3 was owner in possession of the house in dispute on the basis of the Will executed by Mihan Singh in his favour.

5. The defendant appeared in response to the notice and filed written statement raising preliminary objections as to maintainability and estoppel. It was admitted that Sh. Mihan Singh was co-owner to the extent of 1/3rd share in the disputed land and also owned the disputed house. It was asserted that after the death of her previous husband Sh. Sukh Ram, she had performed kareva with Sh. Mihan Singh as on 06.11.1969 and ever since then she had been living with him as his wife and had been discharging all her duties as such. A writing with regard to the kareva marriage was also executed by Mihan Singh. Even the plaintiffs had been admitting and accepting her as wife of Sh. Mihan Singh. It was denied that any family settlement had arrived at between the plaintiffs No.1 and 2 and Mihan Singh at any point of time and that any Will was executed by Mihan Singh in favour of plaintiff No.3. It was alleged that the Will, if any, was result of

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fraud, misrepresentation and undue influence and alleged family settlement was also a fictitious and forged document. While controverting the remaining averments, dismissal of the suit had been prayed for.

6. The plaintiffs filed replication controverting the pleas taken in the written statement and re-asserting those of the plaint. On the pleadings of the parties, the following issues were settled by learned trial Court:-

- “1. Whether Mihan @ Mehma Singh was unmarried and issueless as alleged? OPP
2. Whether on the basis of family settlement in the month of June, 1970, the suit land was in possession of the plaintiffs No.1 and 2 and they raised construction as alleged? OPP
3. Whether Mehma Singh executed a valid will on 15-11-84, in favour of plaintiff No.3? OPP
4. Whether the plaintiffs No.1 and 2 are owners in equal share and in joint possession of the suit land as alleged? OPP
5. Whether Mehma Singh contracted a “kareva marriage” with defendant Bachani and defendant Bachani had been living with said Mehma Singh as his wife, as alleged? OPD
6. Whether Mehma Singh executed an agreement dated 6-11-1969 admitting the “kareva Marriage” as alleged, if so, so its effect? OPD.
7. Whether the suit is not maintainable in the present form as alleged in additional objections No.1 and 3? OPD.
8. Whether the plaintiffs are estopped by their act and conduct as alleged in para No.2 of the additional objection? OPP.
9. Relief.”

7. The parties adduced evidence in support of their respective assertions. The plaintiffs examined PW-2 Banta Singh, PW-3 Ajit Singh, PW-4 Phoola Singh and PW-5 Suchha Singh. The plaintiff No.1 Sampuran

Singh appeared as PW-1. In documentary evidence, they produced Mark

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A/Ex.P1 writing shown to be executed in June 1970, Ex.P-2 Will shown to be executed by Mihaan Singh on 20.05.1984, Ex.P-3 rough site plan of the disputed house, Ex.P-4 to Ex.P-6 copies of jamabandis for the year 1979-80 and 1980-81, Ex.P-7 death certificate of Mihaan Singh and Ex.P-8 copy of mutation No.195.

8. On the other hand, the defendant examined DW-2 Prakash, DW-3 Balwant Singh and herself appeared as DW-1. In documentary evidence, she produced Ex.D-1 karevanama dated 06.11.1969, Ex.D-1 certified copy of order dated 03.07.1985 passed by Assistant Collector Ist Grade, Kharar (as another document had already been exhibited as D-1, therefore, this document shall be considered as Ex.D-1/X), Ex.D-1/A copy of mutation No.1601 qua inheritance of Mihaan Singh, Ex.D-2 copy of order dated 31.10.1985 passed by Collector, Rupnagar in Appeal No.70 of 1985 titled as *Sampuran Singh and another v. Bachni* and Ex.D-3 copy of voter list of Village Palheri.

9. After appraising the evidence produced on record and considering the contentions raised by both the sides, the learned trial Court dismissed the suit filed by the plaintiffs. Challenging the judgment of the trial Court, the plaintiffs Sampuran Singh and Labh Singh filed appeal before learned First Appellate Court which too was dismissed vide judgment and decree dated 03.05.1990 and aggrieved by the same, the instant appeal has been filed by the appellants-plaintiffs Sampuran Singh and Labh Singh whereas the plaintiff No.2 Bala Singh did not prefer any appeal. It will be relevant to mention at this juncture that since during the pendency of the appeal, both the above named appellants-plaintiffs had

expired, hence their legal representatives were brought on record.

10. Learned counsel for the appellants vehemently argued that the findings given by learned Courts below were liable to be set aside as the same were not sustainable in the eyes of law and were perverse. The learned Courts below did not apply their judicious mind. Non-speaking and cryptic orders had been passed. It was well proved on record that Sh. Mihan Singh had died unmarried and issueless and appellant No.1 and plaintiff No.2 Bala Singh being his brothers and only Class-1 legal heirs, were entitled to inherit his estate and had inherited so thereby becoming co-owners of the disputed land to the extent of equal shares but the Courts below committed grave mistake in holding otherwise. It was further argued that the title of the appellant No.1 and Bala Singh over the disputed property had been proved even otherwise on the basis of family settlement Ex.P-1 which was executed in writing amongst Mihan Singh and themselves in the month of June 1970 and it was well proved on record and that the learned trial Court had committed grave error by holding that this document required compulsory registration.

11. It was further argued by learned counsel for the appellants that original Will Ex.P-2 executed by Mihan Singh in favour of the plaintiff No.3-Labh Singh thereby bequeathing his properties had been duly proved not only by the attesting witness but the scribe of the Will had also been examined and their statements had remained unshattered, but learned trial Court and First Appellate Court had wrongly not taken these facts into consideration. Hence, it was urged that the findings given by learned trial Court on this point were also liable to be set aside.

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12. Lastly, it was argued that the learned trial Court had erred in holding that the respondent-defendant had performed kareva with Mihan Singh and being his widow had become entitled to inherit his estate though no satisfactory evidence had been produced on record in this regard. With these broad arguments, it was urged that the impugned judgments of the Courts below were liable to be set aside. The suit deserved to be decreed and further that the appeal deserved to be accepted.

13. Per contra, learned counsel for the respondent argued that there was overwhelming evidence on record to prove that she had performed kareva with Mihan Singh after the death of her first husband Sh. Sukh Ram, in the year 1969 and had lived with Mihan Singh during his life time and was being treated as his wife and as such she was entitled to inherit the estate left by him. The appellants had miserably failed to prove execution of Ex.P-1 or Ex.P-2 by Mihan Singh in their favour. The concurrent findings of fact as recorded by the Courts below on all the points did not deserve any interference and rather deserved to be affirmed. Hence, it was urged that the appeal being devoid of any merit was liable to be dismissed.

14. On hearing the contentions raised by learned counsel for both the parties and on appraising the evidence produced on record, in my considered opinion, the substantial questions of law that arise for consideration are that whether Sh. Mihan Singh was proved to have performed kareva with the respondent-defendant and what was the effect of the same and further that whether he was proved to have executed writing Ex.P-1 and Will Ex.P-2 and what was the effect of these documents? The claim of the respondent Smt. Bachni was that Sh. Mihan Singh had

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performed kareva with her on 06.11.1969 and ever since then she had stayed with him as his wife. To prove this plea, the respondent-defendant Bachni had relied upon Ex.D-1 which is in the form of an agreement. She examined DW-2 Prakash one of the witness to this document. DW-2 deposed that he had got performed kareva of the respondent-Bachni with Sh. Mihan Singh alias Mehma Singh. A chadar was put on Bachni in the presence of her father. The kareva ceremony was performed in the presence of Lumberdar Mehma Singh, Dalipa and some other respectable persons. He proved Ex.D-1 agreement executed in this regard by Sh. Mihan Singh and stated that deed writer Banarsi Dass had scribed this agreement and had read over the contents of the same over which Sh. Mihan Singh and then he himself had affixed their thumb impressions and other witnesses namely, Balwant Singh and Lumberdar Mehma Singh had also thumb marked the same. He also stated that thereafter the respondent had started living with Sh. Mihan Singh who had started treating her as his wife. He was cross-examined in detail but nothing could be extracted from his statement on the basis of which it could be stated that he was making a false deposition. DW-3 Balwant Singh, Clerk of Sh. Tara Chand, Advocate had brought the register of deed writer Sh. Banarsi Dass and deposed on the basis of the same that Ex.D-1 was prepared in the writing of Sh. Banarsi Dass with whose son he had worked and had also seen Banarsi Dass while writing. He also proved an entry regarding preparing EX.D-1 as made in the register of deed writer Banarsi Dass as on 06.11.1969 at Sr. No.1720. His statement also remained unshattered. The respondent also deposed about the factum of performing kareva marriage with Sh. Mihan Singh and proved Ex.D-1. The credit of

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her statement on this point has remained unshaken and, therefore, there is no reason to disbelieve the testimonies of respondent and witnesses produced by her and in my opinion, the same can be fully considered for the purpose of holding that the respondent had performed kareva with Sh. Mihan Singh as on 06.11.1969.

15. Apart from this, there is one more significant factor that amounts to acquiescence on the part of the appellants as to recognition of status of respondent as wife/widow of Sh. Mihan Singh. Ex.D-1/X is certified copy of order dated 03.07.1985 passed by Assistant Collector Ist Grade, Kharar qua mutation No.1601. A perusal of this order shows that after the death of Sh. Mihan Singh, mutation of his inheritance was entered in the name of the respondent while showing her as the widow of the deceased. An objection was raised by the plaintiff No.3-Labh Singh before the Assistant Collector to the effect that Sh. Mihan Singh had died issueless. However, it is further revealed that before the Assistant Collector, the appellant-Sampuran Singh recorded a statement on behalf of other appellants as well as himself that Smt. Bachni was widow of Sh. Mihan Singh and was residing in the village from the last 10-12 years. The statement of Village Lambardar to this effect also been recorded and then the mutation of inheritance of Sh. Mihan Singh was sanctioned in favour of the respondent. It is also revealed from a perusal of Ex.D-2 that the present appellants had filed an appeal against the order of sanctioning of mutation in favour of the respondent but subsequently the appellant Sampuran Singh recorded his statement that respondent was wife of Sh. Mihan Singh and then the appeal was dismissed. No objection as to exhibition of these

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documents in evidence had been raised by the appellants nor the authenticity thereof had been challenged. The recital of both these documents therefore clearly show that the appellant-Sampuran Singh on behalf of himself and others had recorded statement before revenue authorities admitting the respondent as widow of the deceased Sh. Mihan Singh. This admission was best evidence as against the appellants and proves that the respondent was treated as wife of Sh. Mihan Singh during his life time.

16. It may also be mentioned that since the evidence produced on record proves that the respondent and Sh. Mihan Singh had been living together for long years as husband and wife, therefore, there is a presumption in law of legality of marriage existing between the two. In Punjab, kareva form is an approved form of re-marriage of a widow. It requires no religious ceremonies and confers all the rights of a valid marriage. It is a customary form of marriage. In **Mal Singh and another v. Ram Kaur**, AIR 1973 P&H 124, this Court had observed that where the parties lived as husband and wife for 25 years, then it amounts to sufficient evidence of marriage by habit and repute. In **Mohabbat Ali Khan v. Muhammad Ibrahim Khan and others**, AIR 1929 PC 135, it was observed that the law presumes in favour of marriage and against concubinage, when a man and woman had cohabited continuously for a number of years. In **Badri Prasad v. Dy. Director of Consolidation and others**, AIR 1978 SC 1557, it was observed that where the partners lived together for long span as husband and wife, there would be presumption in favour of wedlock. Further, in **Gokal Chand v. Parvin Kumari**, AIR 1952

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SC 231, it was observed that continuous cohabitation of a man and woman as husband and wife and their treatment as such for a number of years may raise the presumption of marriage. In the instant case, the fact that the respondent and Sh. Mihan Singh had been living together continuously had been established from the evidence produced on record by the respondent. It is not the case of the appellants that she was living as concubine of Sh. Mihan Singh. The statement made by one of the appellants before the revenue authorities also prove this fact. Not even this, on a perusal of testimony of PW-1 Sampuran Singh also, it is revealed that he had not specifically denied the factum of respondent being widow of deceased Sh. Mihan Singh and it was simply stated by him that he was not acquainted with the respondent and could not say that she was living with Mihan Singh or not as he had not visited his brother from the last 15-16 years. Even in his examination-in-chief, it was not stated by him that the respondent was not widow of the deceased and he simply stated that Mihan Singh had no child from his loins. It is also relevant to mention here that as per the entries made in Ex.D-1/A which is extract of register of mutation, the appellant No.2/plaintiff No.3 Labh Singh had raised objection as to sanctioning of mutation No.1601 in favour of respondent, to the effect that the respondent had no issue and there was no objection that she was not widow of the deceased Mihan Singh. All this goes to show that there was sufficient, cogent and convincing evidence on record to prove that the respondent-Bachni had performed kareva marriage with Sh. Mihan Singh and had lived as his wife during his life time. Therefore, the findings as given by the learned trial Court on this point and affirmed by learned First Appellate

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Court do not warrant any interference and deserve to be upheld.

17. Proceeding further and coming to the question as to whether Sh. Mihaan Singh had executed writing Ex.P-1 thereby giving his share in the joint properties i.e. disputed land in favour of the appellant-plaintiff No.1 and Bala Singh. Both the Courts below had held that the document Ex.P-1 did not create any right in favour of the appellant-plaintiff No.1 and plaintiff No.2-Bala Singh in respect of the disputed land which was having worth of more than Rs.100/- and could be sold only through a registered sale deed. The learned trial Court and learned First Appellate Court are not shown to have gone into the question of admissibility of the document Ex.P-1 in evidence. To prove the due execution of this document by Mihaan Singh, the appellants had examined PW-1 Sampuran Singh, PW-2 Banta Singh and PW-4 Phoola Singh. PW-4 Phoola Singh deposed that Ex.P-1 was written by Master Sadhu Ram in his presence about 14-15 years back, the contents of the same were read over to the appellant No.1 and plaintiff No.2 and Mihaan Singh and they had affixed their thumb impressions on the same. He stated that he himself and three more persons namely, Lachman Singh, Banta Singh and Bujoo had been witnesses to the execution of Ex.P-1 and also stated that a sum of Rs.500/- was given to Mihaan Singh at the time of execution of this document. As stated by him, the inner house had been left with Mihaan Singh whereas the left over space was given to the plaintiffs No.1 and 2. During cross-examination, he stated that no transaction of sale had taken place and only exchange was got effected in lieu of Rs.500/-. He could not tell about the khasra number of the property which was subject matter of Ex.P-1. He did not remember as to when Mihaan

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Singh had appended his thumb impressions on Ex.P-1. PW-2 Banta Singh was not shown to be signatory of Ex.P-1 but he stated that Ex.P-1 was scribed by Master Sadhu Singh in his presence. On perusal of cross-examination of this witness, it clearly appears that he was confused about the fact as to whether he had executed any Will or any receipt as he deposed at that stage that Will was scribed in his presence. Therefore testimony of PW-2 could not be given any credence. The statements of PW-1 Sampuran Singh and PW-4 Phoola Singh with regard to scribing of Ex.P-1 and by Sadhu Ram Master and thumb marking on the same by Mihan Singh even if believed, in my opinion, did not serve much purpose in view of the fact that on perusal of contents of this document, it is simply revealed that some land which was existing outside the village was agreed to be given to appellant No.1 and plaintiff No.2. Neither the identity nor the exact area of that land had been mentioned in this document. As such identity of the land which was subject matter of Ex.P-1/Mark A as the disputed land had not even been established. More so, it is recited in this document that land of the khewat had been sold by Mihan Singh to appellant No.1 and plaintiff No.2 for a consideration amount of Rs.500/- which had been paid to the former. At the most, this document can be considered to be a document of sale of some land of Mihan Singh to appellants No.1 and Bala Singh. Since as per the terms of this document itself, the sale amount was Rs.500/- i.e. more than Rs.100/-, therefore, this document could not be considered to be a legally admissible document as thereby rights/title in respect of immoveable property having worth of more than Rs.100/- were purported to be created in favour of appellants No.1 and Bala Singh and as per Section 17 of the

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Registration Act, such document required compulsory registration and for want of registration, the same could not be looked into. As such, it is held that learned trial Court and learned First Appellate Court had rightly observed that the document Ex.P-1 did not create any right in favour of the appellant No.1 and Bala Singh in respect of the disputed land. The findings given by learned Courts below on these points are accordingly upheld.

18. So far as the claim of the appellant No.2-plaintiff No.3 that Sh. Mihaan Singh had executed a Will Ex.P-2 in respect of the disputed house in his favour and thereby he had become owner of the same is concerned, on perusal of evidence produced on record, I am of the considered opinion that the learned trial Court had rightly rejected his claim in this regard. No doubt, the document Ex.P-2 which is claim to be original Will had been produced on record by the appellants and the appellant No.2 also examined PW-2 Banta Singh an attesting witness to this Will and PW-3 Ajit Singh, scribe of the same. PW-3 Ajit Singh deposed that he had scribed the Will Ex.P-2 on asking of Mihaan Singh, had read over its contents to Mihaan Singh who had appended his thumb impression on the same after admitting its contents to be correct and then witnesses Lamberdar Mehma Singh and Banta Singh had appended their signatures on the same as a witness. During cross-examination, however, he stated that the contents of the Will were made by himself and did not say that he had scribed the Will Ex.P-2 as per instructions of Mihaan Singh. He did not know Banta Singh. His statement stands belied from the testimony of PW-2 Banta Singh whose statement itself is replete with discrepancies as in his examination-in-chief, he did not say that any Will was scribed by deed writer Ajit Singh and rather stated

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that a writing was scribed by Master Sadhu Ram. He did not utter even a single word in his examination-in-chief to the effect that the document scribed by Sadhu Ram was a Will. He did not say that it was scribed as per instructions of Mihan Singh. Further it is not even shown to be clearly stated by him that it was document Ex.P-2 which was scribed in his presence as he mentioned the said document as Ex.P-11. Then during his cross-examination, he is shown to have stated that his thumb impressions were got affixed on some receipt and by contradicting himself stated that the same were affixed on a Will as well as receipt. He again contradicted himself by saying that witnesses Lachman Singh, Bujoo and Phoola Singh had signed the same as witnesses. On perusal of his statement, it appears that this witness was even confused about the fact as to which particular document had been executed by him. Therefore, on the basis of his statement, it could not be stated to have satisfactorily proved that the Will Ex.P-2 was scribed and thumb marked by Mihan Singh in his presence and it was a voluntary act of Mihan Singh. The well settled proposition of law is that the onus of proving the due execution of a Will is always on the propounder. A Will is to be proved in terms of provisions of Indian Succession Act and Indian Evidence Act. The propounder is required to examine at least one attesting witness for the purpose of proving the execution of the Will. He is also required to show that the Will had been signed by the testator with his free will, in sound disposition of mind and after understanding the nature and effect of disposition. Where suspicious circumstances exist, the propounder is required to explain the same to the satisfaction of the Court. In the present case, though the attesting witness

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and scribe of the Will had been examined by the appellant No.2, however as discussed above, the testimony of PW-2 Banta Singh, attesting witness is full of contradictions and does not inspire any confidence to prove that he had even thumb marked the Will executed by Mihan Singh as an attesting witness. More so, it has not been proved that the execution of Ex.P-2 was an voluntary act of Mihan Singh because as per the recital of this document, it is clearly revealed that it was written therein that the Will was executed by him in favour of his nephew on account of fear of any dispute that might arise and, therefore, it could not be stated to be a willing and voluntary act. More so, though in this Will, it is mentioned that he was having no son but it was not mentioned that he was not having any wife either. No reason for excluding his wife from inheriting his estate has been given in this Will by Mehma Singh which of course shrouds the due execution of this Will with suspicious circumstances. The learned trial Court had also taken note of the fact that the thumb impressions alleged to have been appended by Mihan Singh on Ex.P-2 were smudged and not even a single ridge of those impressions was visible. The learned trial Court after making a detailed discussion had observed that the due execution of Will Ex.P-2 had not been proved. The findings given by learned trial Court on this point were well reasoned which stand affirmed by the learned First Appellate Court. In view of the discussion as made above, this Court sees no reason to interfere with the concurrent findings of fact so recorded by learned trial Court and also finds that no such substantial question of law has arisen in this case which requires to be considered on this point. Therefore, the findings given by learned Courts below on this point also stand affirmed.

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19. It may also be mentioned that the appellants had claimed simplicitor relief of declaration without claiming relief of possession though they failed to produce any convincing, satisfactory and reliable evidence on record to prove that they were in possession of the disputed properties. Viewed from any angle, the observations made by the Courts below do not warrant any interference. Hence, while affirming the same, it is held that the appeal is devoid of any merits and deserves to be dismissed. The same is accordingly dismissed. There is no order as to costs.

20. Miscellaneous application(s), if any, also stand disposed of.

29.03.2023
manju

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No