

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

**AT CHANDIGARH**

**RSA No.3701 of 2012 (O&M)**

**Date of decision: 18.09.2015**

**Sarwan Kumar**

**..... Appellant**

**versus**

**Rajinder Kumar and another**

**..... Respondents**

**CORAM: Hon'ble Mr. Justice Kuldip Singh**

Present: Mr. Malkeet Singh, Advocate for the appellant

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
- 2. To be referred to the Reporters or not ?*
- 3. Whether the judgment should be reported in the Digest?*

**Kuldip Singh, J. (Oral)**

Impugned in the present regular second appeal is the judgment and decree dated 21.2.2012, passed by the learned Additional District Judge, Ambala, affirming the judgment and decree dated 29.1.2010, passed by the learned Civil Judge, Senior Division, Ambala Cantt., vide which the suit of the plaintiff for mandatory injunction was dismissed.

The short facts which are required to be noticed for the purpose of disposal of present appeal are that according to the plaintiff, the disputed house No.1811, situated at Kacha Bazar (Kasai Mohalla), Ambala Sadar, Ambala Cantt, was originally owned by Sukh Ram, who happens to be father of the plaintiff and grandfather of the defendants. Sukh Ram had two sons, namely, Sarwan Kumar

-plaintiff and Ram Chander father of the defendants. According to the plaintiff, the defendants are in possession of the first floor of the disputed house as licensee. Plaintiff further claims that Sukh Ram has bequeathed the disputed property to his wife Sumariya i.e. mother of the plaintiff and grandmother of the defendants through Will dated 14.4.1979. Therefore, after the death of Sukh Ram, Sumariya became the owner of the disputed property. Sumaria further executed a Will dated 19.7.1988 in favour of the plaintiff bequeathing the disputed property in favour of the plaintiff. Sumariya died on 2.10.1988. Sukh Ram had died earlier on 28.10.1980. It was therefore claimed that the defendants are licensee on the first floor of the house and they should be directed to hand over the possession to the plaintiff. It was further claimed that Ram Chander father of the defendants had filed a suit for declaration and permanent injunction against the plaintiff, which was dismissed in default on 2.3.2001. Plaintiff claimed that he has orally terminated the licence and also issued a legal notice dated 11.5.2002.

Defendants had taken a stand that the plaintiff is not exclusive owner of the disputed property. The disputed property is jointly owned by the defendants and their father who was brother of the plaintiff. Therefore, the possession of the defendants is not as a licensee. It was further pleaded that the disputed property was allotted to Rukmani Devi after the partition of the country and mutation No.134 dated 26.5.1976 was sanctioned in her favour. Rukmani Devi was real sister of Sukh Ram father of the plaintiff and grandfather of the defendants. Rukmani Devi died issueless and

after her death, Sukh Ram inherited the disputed property, being the real brother of Rukmani Devi. Defendants claimed that it is ancestral property qua them. The execution of Will by Sukh Ram was denied, though death of Sukh Ram was not disputed. The further Will by Sukh Ram in favour of his wife Sumariya was also denied. From the pleadings, following issues were framed:-

- 1. Whether the plaintiff is entitled to a decree for mandatory injunction on the grounds mentioned in the plaint? OPP*
- 2. Whether plaintiff has no locus standi to file the present suit? OPD*
- 3. Whether suit is not maintainable? OPD*
- 4. Whether suit is barred for law and limitation? OPD*
- 5. Whether suit is bad for non-joinder of necessary parties? OPD*
- 6. Relief.”*

Lower Court took the view that the plaintiff is claiming mandatory injunction on the basis of his claim that he is owner of the disputed property. It was held that the Will of Sukh Ram dated 14.4.1979 (mark C1) was never proved in accordance with law nor the original Will was proved on file. Therefore, it was not proved that the property of Sukh Ram was inherited by his wife Sumariya to the exclusion of other legal heirs. It being so, Sumariya had no right to execute Will dated 19.7.1986 (Ex.P2). The findings were affirmed by the appellate Court.

I have heard learned counsel for the appellant and have also carefully gone through the file.

Learned counsel for the appellant has argued that it was

for the lower Court to frame the proper issue. The issue regarding the Will of Sukh Ram and Sumaria was not framed. It was for this reason that the plaintiff could not prove and produce the Will of Sukh Ram. It has been further argued that an application for additional evidence has been filed, to prove the Will of Sukh Ram.

Learned counsel for the appellant also relied upon the authority of the Hon'ble Supreme Court in M/s Divya Exports v. M/s Shalimar Video Company and others, 2012(1) Civil Court Cases 350 (S.C.), regarding non-framing of the issues by the Court.

I am of the view that at the first instance, the suit is ill-framed. When the plaintiff claimed the title on the basis of Will he should have sought the declaration that he has become the exclusive owner on the basis of the Will, executed by his mother in his favour and further that his mother had become exclusive owner on the basis of Will of his father Sukh Ram. No such declaration was sought. The suit was filed assuming that the ownership of the plaintiff is proved and merely mandatory injunction was sought. When only mandatory injunction was sought, the Court framed the issues accordingly. Plaintiff though proved the Will of Sumariya in his favour in accordance with law. But he did not produce the original Will of Sukh Ram nor prove the same. Therefore, his exclusive title over the disputed house was not proved. In this way, it cannot be said that there was fault on the part of the Court in not framing the proper issues. If the plaintiff has filed the suit in a wrong form, he is to blame himself for the same.

Both the Courts below have recorded finding that the

plaintiff has failed to prove his title and therefore, mandatory injunction was refused. No question of law much less substantial question of law arises. There are concurrent findings of two Courts below. Hence, the present regular second appeal is dismissed.

In view of disposal of the appeal, all the pending applications also stand disposed of.

**18.09.2015***gk***(Kuldip Singh)  
Judge**