

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

-.-

**RSA No.2688 of 2013 (O&M)
Decided on : January 12, 2015**

Sunil Dutt

... Appellant

Versus

Shakti Kumar and another

... Respondents

CORAM : HON'BLE MR.JUSTICE MAHAVIR S. CHAUHAN

Present : Mr. S.S. Sodhi, Advocate, for
Mr. A.S. Kalra, Advocate, for the appellant.

Mahavir S. Chauhan, J. (Oral)

This is plaintiff's Regular Second Appeal against judgment/decreed dated 29.11.2012 whereby the Court of learned District Judge, Shaheed Bhagat Singh Nagar ('First Appellate Court' in short), while affirming the findings recorded by the Court of learned Civil Judge (Senior Division) Shaheed Bhagat Singh Nagar ('Trial Court' in short) dismissing the appellant's civil suit for declaration and permanent injunction vide judgment/decreed dated 02.05.2012, has dismissed the appeal.

I have heard learned counsel for the appellant at length.

It is argued by learned counsel for the appellant that the property in dispute was purchased by Rameshwar Singh, father of the appellant by way of an oral sale deed of the year 1968 for a consideration of

Rs.99/- and as such it was not registered but the Courts below have failed to take note of this aspect of the matter. It is also argued that even if the sale deed of the year 1968 is to be ignored, the appellant has to be declared owner in possession of the suit property as his possession thereupon has ripened into ownership by efflux of time.

Nothing more has been urged.

Case of the appellant before the Courts below was for grant of a decree of declaration and permanent injunction. It was pleaded that the suit property was purchased by father of the appellant from Mahla Ram for a consideration of Rs.99/- in the year 1968 and as such, the appellant, after death of his father, became owner of the suit property. But the defendants (respondents herein) were asserting their right thereupon and were out to interfere in his possession.

The suit was contested by the respondents by filing a written statement wherein, besides pleading the routine preliminary objections, the averments made in the plaint were denied and it was asserted that Mahla Ram, the exclusive owner of the suit property, died unmarried and issueless but before his death, he had executed a registered will dated 14.04.1960 in favour of Hari Ram father of respondent No.1 and grand father of respondent No.2 and on the basis of that registered will, they have become owners of the suit property.

Learned trial Court framed issues from the pleadings of the parties. Parties adduced evidence. Learned trial Court on hearing the parties and appraisal of evidence came to a definite conclusion that the

appellant was not able to prove his case and as such, his suit was dismissed vide judgment/decreed dated 02.05.2012. As aforesaid, appellant also failed in appeal.

I have examined the impugned judgments/decrees in the light of submissions made at the bar. I find that the oral sale deed of the year 1968 has remained unproved. There is no evidence, whatsoever, to support appellant's plea that the suit property was purchased by his father, as claimed by him. Appellant brought an application for leading additional evidence to bring on record T.S.1. Form of the Municipal Committee to substantiate his plea. Learned Appellate Court though declined the request for additional evidence as it was found to be irrelevant, yet noted in the impugned judgment that even this document does not support appellant's claim as regards his ownership and possession over the suit property.

Plea of adverse possession put up on behalf of the appellant, in my considered view, is not available to him as it runs contrary to his original plea of ownership based on oral sale deed of the year 1968.

In view of the above, coupled with the fact that the appeal involves no substantial question of law and the findings recorded by the Courts below are pure findings of fact, I am not inclined to interfere with the impugned judgments/decrees passed by the Courts below.

Dismissed.

12.01.2015
anju rani

[Mahavir S. Chauhan]
Judge