

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

**Regular Second Appeal No.1000 of 2015 (O&M)
Date of decision:01.04.2015**

Prem Kumar

.....Appellant

Versus

Sandeep Samuel

.....Respondent

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. K.K. Garg, Advocate,
for the appellant.

Mr. B.S. Bedi, Advocate,
for the respondent.

Ritu Bahri, J.

CM No.2988-C of 2015

Learned counsel for the respondent raised no objection with regard to payment of deficiency of Court fee.

Accordingly, the present application is allowed and the appellant is permitted to make good the deficiency of Court fee.

RSA No.1000 of 2015

This appeal has been filed against the judgment dated 03.11.2014 passed by the Additional District Judge, Chandigarh, dismissing the appeal filed by the defendant-appellant against the judgment and decree dated 01.12.2011 passed by the Civil Judge (Senior Division), Chandigarh, whereby suit filed by the plaintiff has been decreed.

Shanti-plaintiff (since deceased) filed a suit against her son Prem Kumar-defendant for mandatory injunction for recovery of possession of part of House No.2598, Sector 40-C, Chandigarh. As per plaintiff, she was

residing in the above stated house along with her husband, grandson-Sandeep Samuel and his wife. Her son Prem Kumar-defendant was working in Estate Office, Chandigarh and was living in Government accommodation in Sector 35, Chandigarh. After retirement, defendant-appellant was permitted by the plaintiff to reside in her house. But, the defendant and his wife started fighting with the plaintiff and her husband. His behaviour was aggressive. He dragged the plaintiff and her husband in unnecessary litigation by filing two civil suits. Thereafter, the present suit was filed by the plaintiff after issuing a legal notice dated 07.05.2003, revoking the licence and to vacate the premises. The plaintiff also claimed mesne profits at the rate of 2500/- per month from May 2003 onwards along with electricity and water charges w.e.f. 15.09.2002 to 11.06.2003 to the extent of Rs.9292/- with interest.

During the pendency of the suit, Shanti Devi-plaintiff had died on 15.11.2004 leaving behind her grandson-Sandeep Samuel as her only legal representative. Her husband had died on 24.11.2004. Shanti Devi left a registered Will dated 27.12.2002, vide which her grandson Sandeep Samuel had inherited her entire estate. Thereafter, Sandeep Samuel, who was impleaded as legal representative of deceased Shanti Devi-plaintiff, amended the suit and incorporated the relief seeking ownership and possession on the basis of the aforesaid Will dated 27.12.2002.

Upon notice, defendant-appellant filed written statement and controverted the allegations levelled by the plaintiff.

From the pleadings of the parties, following issues were framed by the trial Court on 02.04.2007:-

1. Whether the plaintiff is entitled for relief of mandatory

injunction for recovery of possession of the suit property, as alleged? OPP

2. Whether the deceased plaintiff Shanti Devi had executed a Will dated 27.12.2002, as alleged? OPP
3. Whether the suit is not maintainable? OPD
4. Whether the suit is liable to be dismissed with special costs? OPD
5. Relief.

Later on, the following addition issues were framed on 21.04.2010:-

(4A) Whether the plaintiff can file the suit on the basis of Will without obtaining the probate in view of the bar under Indian Succession Act? OPP

(4B) Whether the plaintiff is also entitled for recovery of Rs.16,792/- along with 12% per annum interest and recovery of mesne profits of Rs.2500/- per month along with electricity and water charges along with interest at the rate of 12% per annum till realization of the amount? OPP

Before the trial Court Baljinder Pal Kaur, attesting witness of the Will, appeared as PW-3 and deposed that she knew Shanti, who was residing in her neighbourhood along with her husband and grandson-Sandeep. She executed a Will dated 27.12.2002, Ex.PW2/B, which was drafted by Shri M.L. Gupta. Shanti had put her thumb impression on the Will by admitting its contents to be correct. Thereafter, the said Will was got registered before the Sub Registrar, Chandigarh. Tej Inder Singh (PW-4) brought the summoned record in respect of the house in question and deposed that the

said house was allotted to Shanti-plaintiff vide allotment letter, Ex.PW4/A. Possession of the house was given to Shanti vide letter, Ex.DB. After changing the category of the house from LIG to MIG, the accounts were finalized vide Ex.DE.

Prem Kumar-defendant (DW-1) in his cross-examination had admitted the Will dated 27.10.2002, Ex.PE, executed by his father and attested by the same witnesses i.e. Baljinder Pal Kaur and Madan Lal Gupta, who are also the attesting witnesses of the disputed Will Ex.PW2/B. The said Will was executed by Bija Puria, father of the defendant, in favour of Sandeep Samuel. Admission of the defendant in accepting the execution of Will dated 27.10.2002 (Ex.PE) by his father as correct, was an important circumstance in favour of the Will Ex.PW2/B, which was executed by Shanti-plaintiff in favour of Sandeep Samuel. Both Shanti and her husband agreed to execute their respective Wills in favour of Sandeep Samuel. Both the Wills were attested by Baljinder Pal Kaur and Madan Lal Gpta. The will dated 27.12.2002, Ex.PW2/B, executed by Shanti, had been thumb marked by her. Plaint, affidavit (Ex.PA) and *vakalatnama* in favour of Shri Gaganjot, Advocate, were thumb marked by Shanti-plaintiff. The trial Court observed that the defendant (appellant) did not get the thumb mark of Shanti compared from an expert.

Another fact, which the trial Court has taken into consideration is that Bija Puria, father of defendant, had executed a General Power of Attorney dated 29.09.2000 and Will dated 28.07.2000 in favour of Prem Kumar-defendant. However, he subsequently cancelled the said General Power of Attorney and the Will vide cancellation deeds, Ex.PB and Ex.PC. Thereafter, he executed a General Power of Attorney on 09.01.2004 (Ex.PD)

in favour of Sandeep Samuel. This fact further showed that on account of litigation and quarrel of the defendant with Shanti, GPA dated 29.09.2000 and Will dated 28.07.2000 were cancelled by his father. Moreover, the Will dated 27.12.2002, Ex.PW2/B, was duly registered by the Sub Registrar in his official capacity. The execution of the Will in question was not found to be surrounded by suspicion. Moreover, as per the amendment made in Section 213 (2) of Indian Succession Act, 1925, in the year 2002, it was made non-applicable to Indian Christian by the said amendment. Hence, from the date of amendment dated 27.05.2002, Section 213 was not applicable to the Indian Christian. Therefore, the present suit filed on 25.09.2003, was maintainable without seeking any probate of the Will in question. Ultimately, the suit was decreed directing the defendant-appellant to deliver possession of the premises in question to the plaintiff along with Rs.8448/- along with interest at the rate of 6% per annum from the date of filing of the suit till realization. Plaintiff was also held entitled to get Rs.2500/- per month towards mesne profits from the date of filing of the suit till recovery of possession.

The lower appellate Court, affirmed the findings of the trial Court and dismissed the appeal filed by the defendant-appellant. Hence, this appeal.

After going through the judgments passed by both the Courts below, this Court is of the view that the Will dated 27.12.2002, Ex.PW2/B, executed by Shanti Devi-plaintiff has been duly proved on record by producing attesting witness of the Will namely Baljinder Pal Kaur (PW-3). The ownership of the house in question has been proved by examining Tej Inder Singh (PW-4), who was an official of the Estate officer, Chandigarh.

The defendant-appellant had been litigating with his parents. Thereafter, his father, who had earlier executed GPA dated 29.09.2000 and Will dated 28.07.2000 in favour of Prem Kumar-defendant, got cancelled the same vide cancellation deeds, Ex.PB & Ex.PC. Thereafter, he made another Will dated 27.10.2002, Ex.PE, in favour of Sandeep Samuel. The correctness of this Will was admitted by the defendant-appellant in his cross-examination. Once, the Will in question stood duly proved, the suit filed by the plaintiff has been rightly decreed by the Courts below.

After going through the impugned judgments passed by both the Courts below, no illegality, much less perversity has been found therein warranting interference by this Court.

No substantial question of law arises for consideration.

Dismissed.

01.04.2015
ajp

(RITU BAHRI)
JUDGE