

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

RSA No.507 of 2015 (O&M)

Date of decision : 28.07.2015

Jaspal Singh

...Appellant

versus

Lakhmir Singh

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Vivek Singla, Advocate for the appellant.

RITU BAHRI , J (Oral)

CM No.1411-C of 2015

There is a delay of 26 days in filing the appeal.

For the reasons mentioned in the application, the same is
allowed and the delay of 26 days in filing the appeal is condoned.

CM stands disposed of.

RSA No.507 of 2015

The appellant/defendant has come up in regular second appeal against the judgments of the trial Court dated 15.05.2012 and the lower appellate Court dated 17.09.2014, whereby the suit of the plaintiff has been decreed for possession and permanent injunction.

Labh Singh was father of the plaintiff Lakhmir Singh and defendant Jaspal Singh. Labh Singh has bequeathed the suit property to his wife Smt. Harbhajan Kaur in terms of registered Will No.21/3 dated 12.12.1994/13.12.1994. Smt. Harbhajan Kaur mother of the parties to the suit in terms of registered gift deed No.1524/1 dated

17.03.2003, gifted the suit property to him. After one year after the execution of the gift deed, the defendant requested him to provide some space for temporary use. He assured him to vacate the premises upto 31.12.2007. Considering the mutual relations between the parties, possession of the suit property was handed over to the defendant as a licensee. The licence was to expire on 31.12.2007. The defendant did not hand over the vacant possession despite legal notice dated 14.08.2008 and thereafter the present suit was filed.

On notice, the defendant filed his written statement, taking the stand that he had been in possession of the suit property since long. It has been pleaded that the plaintiff wishes to grab the entire family property on the basis of some documents. In a Panchayat held on 08.01.2008, the plaintiff himself committed that he shall be liable to give due share to all the brothers from the property of the mother, which was in his custody. Story of licence has been cooked up by the plaintiff for defeating his rights. The plaintiff fired a gun shot at him for putting him in the fear of life and in this respect a criminal case has been registered against him. Alleged Will and gift deed are result of fraud. Following issues were framed:-

1. Whether the plaintiff is owner of house No.E-100, Poultry Area, Nilokheri, District Karnal? OPP.
2. Whether the plaintiff is entitled to possession of the portion, shown in red colour in the site plan attached with the plaint, of the House No.E-100, Poultry Area, Nilokheri, District Karnal? OPP.

3. Whether the plaintiff is entitled to mesne profit at the rate of Rs.2,000/- per monthly? OPP.
4. Whether the suit of the plaintiff is not maintainable? OPD.
5. Whether the suit of the plaintiff is bad for mis-joinder and non-joinder of the necessary parties? OPD.
6. Whether the plaintiff has no locus-standi and cause of action of file the present suit? OPD.
7. Whether the defendant has become the owner of the portion shown in red colour and the site plan attached with the plaint of house No.E-100, Poultry Area, Nilokheri, District Karnal, by way of adverse possession? OPD.
8. Relief.

Issue No.1 to 3 and 7 were decided together. Plaintiff examined has examined as many as six witnesses. Karambir, Registration Clerk of the office of Tehsildar, Nilokheri as PW1. He is a witness of record and has placed on record certified copy of Will in dispute as Ex.P1 and certified copy of Will of Harbhajan Kaur as Ex.P2 and certified copy of gift deed as Ex.P3. Krishan Kumar son of Phool Singh has been examined as Ex.PW2. He is an attesting witness of Ex. P2, Will dated 17.04.2007 executed by Harbhajan Kaur and has testified that the said Will was executed by Harbhajan attesting witness. PW3 Nisha Arora W/o late Sh. Vinay Arora, has been examined as PW3. She is the wife of late Vinay Arora, who scribed all the three documents Ex.P1 to Ex.P3. She identified the signatures of

her husband on all these documents. She also brought the original register, where entry in respect of Ex.P3 was recorded at Sr. No.419 dated 14.03.2003. Copy of register has been placed on record as Ex.P4. R.K.Kamboj, Draftsman has been examined as PW4. He has testified that the site plan Ex.P5 was prepared by him after visiting the spot. Brij Mohan Bakshi, one of the attesting witness of the gift deed in dispute, has been examined as PW5. This witness, in terms of his affidavit, Ex.PW5/A has testified that the gift deed in dispute was scribed and executed on 14.03.2003 and was registered on 17.03.2003 in his presence and in the presence of other witnesses. The plaintiff then examined himself as PW6 and in terms of his affidavit Ex.PW6/A has testified on the lines of the plaint.

On the other hand, the defendant examined as many as five witnesses. He has examined himself as DW1 and in terms of his affidavit Ex.DW1/A, reiterated the defence taken by him in his written statement. Swaran Singh son of Bhag Singh has been examined as DW2. He, in terms of his affidavit Ex.DW2/A, has testified that he was a member of the Panchayat convened on 08.01.2008. Gurdeep Singh, another brother of the parties to the suit has been examined as DW3. Balwant Singh Clerk of office of Licensing Authority, Karnal has been examined as DW4. Jai Bhagwan, SDO (Telephone), Nilokheri has been examined as DW5, who testified that the land line connection No.10745-247446 has been released in favour of the defendant Jaspal Singh at House No.100-E, Poultry Area, Nilokheri.

After the death of Labh Singh, Harbhajan Kaur had filed succession petition No.5 of 1997 in which the plaintiff and defendant were arrayed as respondents. As per Ex.P11 certified copy of judgment dated 31.03.1998 passed in the said succession case, both were proceeded against ex-parte. The petition was allowed on the basis of registered Will in dispute. No one filed any appeal against the ex-parte decree and it has attained finality. The said judgment was challenged by another brother Gurdeep Singh DW3 by filing a separate civil suit which was dismissed in the presence of defendant Jaspal Singh and hence now Jaspal Singh could not take the plea that he was not aware of the ex-parte decree and judgment on the basis of a Will in dispute. The conduct of the defendant would amount to admission of the Will in dispute. Since the decree was passed in the presence of Jaspal Singh and in the subsequent suit of Gurdeep Singh, he was arrayed as respondent, the decree would be binding upon Jaspal Singh with regard to execution of the Will as it has attained finality with regard to gift deed in dispute. The plaintiff had examined one attesting witness of the registered gift deed as PW5. The plaintiff has also proved the due execution of the registration thereof. The trial Court further examined the Panchayati Faisla dated 08.01.2008, DW1/11. The plaintiff before the Panchayat had agreed to share the entire property received by him from his mother with his other brothers. The property which the plaintiff has received through Ex.P2, which has been executed by Harbhajan Kaur and the Panchayati Faisla had nothing to

do with the gift deed Ex.P3. The trial Court had held that the plaintiff had successfully proved his title in the suit property.

The plaintiff on the other hand could not lead sufficient evidence to prove that the defendant was a licensee. As per the plaintiff, licence of the house in dispute was given to the defendant in the first week of March 2004, however, the telephone bill Ex.D1/6 was dated 11.02.2003, Ex.DW1/7 to DW1/9 are the other bills dated 11.10.2003, 11.08.2003 and 11.12.2002. Since the defendant occupying the house even before the grant of licence, therefore, defendant was not found to be in possession as a licensee. The suit for possession by way of mandatory injunction after revocation of licence, ad valorem Court fee is not payable. Since the licence was not proved, the plaintiff was required to affix ad valorem Court fee on the market rate and he was not entitled to the relief of mesne profit and hence finding on issue No.3 was returned against the plaintiff. However, the relief of possession was subject to fixation of ad valorem Court fee on market value. The suit of the plaintiff was decreed for declaration that he was the owner of the house in dispute and the defendant was directed to hand over the vacant possession within three months only after the fixation of ad valorem Court fee on market value.

The lower appellate Court on appeal has affirmed the findings recorded by the trial Court that Labh Singh father of the plaintiff had given the property in favour of his wife Smt.Harbhajan Kaur as per Ex.P1. Execution of the Will Ex.P1 was upheld. Decree

in which both the plaintiff and defendant were parties and Smt. Harbhajan Kaur was granted succession certificate. As per the gift deed Ex.P3 Harbhajan Kaur gifted her house in dispute to her son Lakhmir Singh. She disinherited her remaining sons on the ground that they did not take care of her. The execution of the gift deed was duly proved by one attesting witness of the registration. The plaintiff had successfully proved his title and the lower appellate Court in the absence of any evidence with regard to giving his property to the defendant as a licensee the suit was decreed by the trial Court for possession on deposit of ad valorem Court fee on market value. No substantial question has arisen in this appeal for adjudication.

Dismissed.

28.07.2015
Vinay

(RITU BAHRI)
JUDGE