

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.3169 of 2014(O&M)
Date of decision: 08.09.2015

Vijay Kumar Vasan

... Appellant

Versus

Mrs. Vimal and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Raman Sharma, Advocate for the appellant.
Mr. Charu Sharma, Advocate for the respondents.

1. Whether reporters of local papers 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?

ARUN PALLI J. (Oral)

In a suit filed by the plaintiff, he had prayed for a declaration that he was in possession of the properties bearing Nos.29 & 30, comprised in khasra Nos.2163 & 2180, situated at Vijay Nagar, Jalandhar, pursuant to a Will dated 15.07.1990, executed by his father late Sh. Chaman Lal Vasan. And he was entitled to succeed to all movable and immovable properties left behind by his late father. A decree for injunction was also claimed restraining the defendants from causing any interference in his possession over the properties bearing Nos.29 & 30, comprised in khasra Nos.2163 & 2180. The suit was partly decreed as only a decree for injunction was granted by the trial court. Appeal

preferred against the said decree i.e. dated 28.09.2012, failed and was dismissed by the appellate court vide judgment dated 25.02.2014. This is how, plaintiff is before this court.

Learned counsel for the appellant submits that the finding recorded by the appellate court itself reveals that father of the appellant, namely, late Chaman Lal Vasan was concededly the owner of the suit property. The Will being propounded by the plaintiff (Ex.P2) was not disputed by the defendants in their written statement either. In any case, execution thereof was duly proved by the marginal witnesses i.e. PW2 & PW3. So much so, plaintiff was conceded to be in possession of the suit property by the defendants. Yet, a declaration that he indeed was the owner of the suit property, pursuant to a Will dated 15.07.1990, was denied to the plaintiff, as he had not claimed any declaration qua title. Secondly, the suit property was alleged to be comprised in khasra Nos.2163 & 2180, but the plaintiff had failed to produce any revenue record to substantiate his claim. It is contended that the observations recorded by the first appellate court are erroneous and contrary to the record. He submits that the plaintiff indeed claimed a declaration even qua title, as it was duly prayed that he was entitled to succeed to all movable and immovable properties left behind by his late father Sh. Chaman Lal Vasan. Further, vide an application seeking permission to adduce additional evidence, the

document (Annexure A3) that was sought to be brought on record, shows that plot Nos.29 & 30 formed part of the Development Scheme of 22.5 Acres and the same was comprised in khasra No.2163. A reference in this regard is made to Annexure A3, appended with the appeal before this court. Likewise, Annexure A2 shows that property No.29-30, situated at Vijay Nagar, was indeed owned by Vijay Kumar Vasan i.e. plaintiff son of late Sh. Chaman Lal Vasan. However, still vide order dated 25.02.2014, prayer of the plaintiff to adduce additional evidence was declined on the ground; *“the production of alleged documents does not appear to be necessary for fair disposal of the suit and appeal”*. Learned counsel for the appellant/plaintiff submits that there was never any dispute qua the identity of the property between the parties. And in any case, the reason assigned by the appellate court in support of its order is wholly erroneous, as the document Annexure A2 as also Annexure A3 that were sought to be tendered in evidence by way of additional evidence, have a decisive bearing on the matter in issue. Particularly, when the application moved by the appellant was not even opposed by the defendants by filing any reply.

During the course of hearing a consensus was reached by the counsel for the parties that in the wake of the position, as sketched out above, the judgment rendered by the appellate court, dated 25.02.2014, as also the order of even

date declining the prayer of the plaintiff to adduce additional evidence, be set aside and the matter be remitted to the appellate court for decision of the appeal as also the application under Order 41 Rule 27 of CPC afresh.

That being so, the judgment dated 25.02.2014, as also the order of an even date vide which the application of the plaintiff for additional evidence was dismissed, are set aside. Accordingly, the matter is remitted to the appellate court for re-decision of the appeal as also the application, in accordance with law, within a period of 3 months from the receipt of certified copy of this order.

Parties through their counsel are directed to appear before the appellate court on 28.09.2015.

The appeal is accordingly disposed of in the above terms. Needless to assert, this order shall not constitute any expression of opinion as regards the merit of the claim of either party.

September 8, 2015
Rajan

(Arun Palli)
Judge