

RSA No. 3657 of 2014 (O&M)

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

RSA No. 3657 of 2014 (O&M)

Date of Decision: September 07, 2015

Dr. Ashok Kumar Aggarwal

...Appellant

Versus

Pardeep Kumar Aggarwal & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. M.L. Saggar, Senior Advocate with
Mr. Gaurav Grover, Advocate
for the appellant.

Mr. Satinder Khanna, Advocate
for the caveators.

AUGUSTINE GEORGE MASIH, J. (Oral):

Suit for separate possession of 2/3rd share by way of partition of house bearing No.B-I/1187, situated at Satsang Road, Civil Lines, Ludhiana, was filed by the respondent-plaintiffs No.1 and 2 against the appellant-defendant No.1 and respondents No.3 and 4/defendants No.2 and 3. Despite service, Kanta Rani (respondent No.4/defendant No.3) did not appear before the Civil Court and she was proceeded against *ex parte* on 22.01.1999 while Amar Nath (respondent No.3/defendant No.2) made a statement in the Civil Court that he being a tenant has nothing to do with the property. The suit was decreed by the Additional Civil Judge (Senior Division),

RSA No. 3657 of 2014 (O&M)

Ludhiana, on 25.11.2009, against which the appeal preferred by appellant-defendant No.1 was dismissed by the Additional District Judge, Ludhiana, on 31.01.2014, which has been challenged in the present appeal.

As per the undisputed facts, Dr. Harnam Satsangi, who was the predecessor-in-interest, purchased a property measuring 1826 square yards on 14.02.1942 through registered sale deed. Out of this property, he sold 272 square yards on 07.12.1948 to Shri Madan Lal Handa. Out of remaining property measuring 1554 square yards, 478 square yards of land was transferred to Mohinder Nath, brother of Dr. Harnam Satsangi by him in the year 1957. This property was allotted No.B-I/1188 by the Municipal Corporation, Ludhiana. The remaining property measuring 1076 square yards was allotted No.B-I/1187. In the income tax returns filed by Dr. Harnam Satsangi for payment of estate duty, the property mentioned is B-I/1187 only. Dr. Harnam Satsangi died on 21.03.1982. Letter dated 17.09.1984 was submitted to the Municipal Corporation, Ludhiana, by the appellant and respondents No.1 and 2 for change of ownership of property No.B-I/1187.

Mohinder Nath who was owner of property bearing No.B-I/1188 transferred the same in favour of Pardeep Kumar Aggarwal-respondent No.1 by way of a decree of Civil Court. He also executed a Will bequeathing this property in favour of respondent No.1. Ashok

RSA No. 3657 of 2014 (O&M)

Kumar Aggarwal-appellant while appearing as DW-3 in his cross-examination has admitted that earlier a suit was filed where he was one of the parties in which said Mohinder Nath transferred the property in favour of respondent No.1. He also admitted that Mohinder Nath, during his life time, executed a registered Will in favour of respondent No.1. The decree passed in the suit and the Will executed by Mohinder Nath in favour of respondent No.1 transferring his property bearing No.B-I/1988 have not been challenged by the appellant and therefore, it has attained finality.

In the reply which has been filed to the civil suit, the appellant had set up two documents i.e. Will dated 21.02.1982 which is alleged to have been executed by Dr. Harnam Satsangi and a memorandum of family settlement dated 01.04.1982 which is alleged to have been arrived at after the death of Dr. Harnam Satsangi on 21.03.1982. The said documents were not brought on record before the trial Court and therefore, an application under Order 41 Rule 27 of CPC, was filed to lead secondary evidence which application was allowed but he has failed to produce the said two documents, however, it was asserted that the said documents were in possession of Radha Aggarwal (respondent No.2) widow of Dr. Harnam Satsangi (his mother) who denied that there were any such documents or that they were in her possession.

It is the contention of the learned Senior Counsel for the

RSA No. 3657 of 2014 (O&M)

appellant that the appellant had examined two witnesses in support of the execution of the Will and the family settlement dated 21.02.1982 and 01.04.1982 respectively. One was Dinesh Kumar Advocate (DW-1) who had drafted the two documents and signed the same as also Brij Bhushan (DW-2), co-brother (Sandhu) of Dr. Harnam Satsangi. Both these witnesses deposed about the execution of the Will dated 21.02.1982 of Dr. Harnam Satsangi as well as execution of the memorandum of family settlement dated 01.04.1982. He contends that the findings recorded by the courts below that the appellant has miserably failed to prove the execution of these two documents, thus, cannot be sustained. He, thus, contends that the judgments passed by the Courts below deserve to be set aside.

Having considered the submissions made by the learned Senior Counsel for the appellant and with his assistance, on going through the judgments passed by the Courts below as also the evidence/statement/cross-examination of Dinesh Kumar Advocate (DW-1) and Brij Bhushan (DW-2), I am of the considered view that the conclusion drawn by the Lower Appellate Court cannot be faulted with. It is not in dispute that after the death of Dr. Harnam Satsangi on 21.03.1982, the legal heir certificate was applied for by the appellant alongwith respondents No.1 and 2 which was issued on 21.05.1982 by the Deputy Commissioner in the name of all three

RSA No. 3657 of 2014 (O&M)

collectively. An application by all three was filed before the Municipal Corporation on 17.09.1982 alongwith the legal heir certificate dated 21.05.1982 mentioning therein that they were the only legal heirs/owners of the property bearing Municipal Corporation No.B-I/1187 in equal shares and the prayer was made to transfer the property in dispute in their name in the records of the Municipal Corporation. Had there been a Will dated 21.02.1982 or the memorandum of family settlement dated 01.04.1982 in existence as alleged, the same could have been produced by the appellant at that stage or at least stated so but he did not. He did not initiate any proceeding to avail of his legal remedy at that stage. The original documents have also not been produced before the Court or in the Municipal Corporation at the time of issuance of transfer certificate. The copy of the Will has not been brought on record what to say of original. The copy of the family settlement which has been placed on record as Ex.D-4, does not bear signatures of any of the parties or the witnesses. The Courts below have rightly not believed the so-called/alleged Will dated 21.02.1982 or the family settlement dated 01.04.1982.

The judgments and decree passed by the Courts below is based on the pleadings and proper appreciation of the evidence brought on record which do not call for any interference by this Court as there is no misreading or non-consideration of evidence nor is

RSA No. 3657 of 2014 (O&M)

there any perversity or illegality in the same.

No substantial question of law is involved in the present appeal which requires consideration of this Court. Therefore, finding no merit in the present appeal, the same stands dismissed.

CM No.8463-C and 8464-C of 2014

In view of the order passed in the main appeal, these applications stand dismissed.

September 07, 2015

Harish

**(AUGUSTINE GEORGE MASIH)
JUDGE**