

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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RSA No. 810 of 2015 (o&m)

Date of decision : March 09, 2015

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Jeet Raj (deceased) through LRs

.....Appellants

Versus

Smt. Premlata

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Vinod K. Kaushal, Advocate for the appellants.

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1. *Whether Reporters of Local Newspapers 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?*

RITU BAHRI, J

C.M No. 2414-C of 2015

For the reasons mentioned in the application, delay of 44 days in filing the appeal is condoned.

C.M is allowed.

RSA No. 810 of 2015

The plaintiffs-respondents no. 1 & 2 filed a suit for possession of 1/3rd share by way of partition by metes and bounds of the joint property comprising of one shop, two rooms, two hall rooms, one bath room and one kitchen and terrace on the ground floor and one latrine on the first floor marked by letters A B C D E F G

H I J K L shown in red and blue colors in the site plan and prayed for permanent injunction restraining defendant no.1-appellant from changing the nature of the above said property i.e suit property and from alienating the same in excess of his share by way of consequential relief.

Plaintiffs and defendants no. 1 & 2 are co-owners in equal shares in joint possession of the property as per the site plan and head note of the plaint. Originally Sh. Kartar Chand was the owner of the property. Plaintiff no.1 being wife and plaintiff no.2 being son of Baij Nath (deceased) son of Kartar Chand were claiming 1/3rd share in the property on the basis of natural succession. Defendants took the plea that Kartar Chand had executed a registered Will dated 15.6.1992 in favour of defendant no.3 Rano Devi. By virtue of the Will, Smt. Rano Devi is exclusive owner in possession of the suit property.

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

- 1. Whether the plaintiffs are owner of the suit property to the extent of 1/3rd share? OPP*
- 2. Whether the plaintiffs are entitled for possession by way of partition? OPP*
- 3. Whether the defendant no.1 was threatening to change the nature of suit property and alienating to do and liable to restrain from doing so? OPP*

4. Whether the suit of the plaintiff is not legally maintainable in the present form? OPD

5. Whether the suit of the plaintiff is bad for misjoinder and non-joinder of the necessary parties? OPD

5-A. Whether Kartar Chand executes a Will dated 15.6.1992 in favour of defendant no.3. If so its effect? OPD

To prove the validity of the Will, defendants no. 1 & 3 examined DW-6 Yash Pal, one of the attesting witnesses, who deposed that such Will was executed by Kartar Chand in favour of defendant no.3 in his presence but his statement cannot be looked into because he did not appear for cross-examination by the defendants. Hence his examination in chief was rightly ignored by the trial Court. The second witness examined by the defendants to prove the Will was DW-3 Ashok Kumar who deposed that Milkhi Ram was his father. He died on 11.10.2006. He identified the signatures of Milkhi Ram, one of the attesting witnesses on Will Ex. D2. However during his cross examination he deposed that he was not having any personal knowledge about the Will. He was also not having any acquaintance with Kartar Chand. So the execution of such Will by Kartar Chand cannot be said to have been proved from the statement of this witness. The third witness examined by the defendants to prove execution of Will by Kartar Chand is DW-4, Chhajju Ram Deed Writer. Although in his examination in chief he

deposed that such Will was got scribed from him by Kartar Chand son of Bhulla Ram in the presence of aforesaid two attesting witnesses and the same was executed in his presence by the testator and also in the presence of aforesaid two attesting witnesses and both the attesting witnesses put their signatures on it but during his cross-examination he deposed that neither Yash Pal nor Kartar Chand was personally known to him. Statement of this witness was also held not sufficient to prove the execution of Will by Kartar Chand. Hence under Section 68 of the Indian Evidence Act, 1872, the Will was not proved.

The suit of the plaintiff was decreed and on appeal the findings have been affirmed. No appeal was filed by defendant no.3- Rano Devi before the lower Appellate Court, who was the beneficiary of the Will. Appeal was filed by Jeet Raj husband of Rano Devi and Kanta Devi which was dismissed vide order dated 15.10.2014.

Present regular second appeal has been filed by the legal heirs of Jeet Raj (deceased). After going through the judgments passed by both the Courts below and keeping in view the fact that the execution of the Will executed by Kartar Chand was not duly proved and that Rano Devi being the beneficiary of the Will had not filed any appeal against the judgment of the trial Court, no substantial question of law arises for consideration in this regular second appeal. Hence the same is dismissed.

March 09, 2015
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(**RITU BAHRI**)
JUDGE