

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.3207 of 2010 (O&M)
Date of decision: March 11, 2016.

Pyare Lal

... **Appellant**

v.

Subhash and others

... **Respondents**

CORAM: **HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. Sanjay Mittal, Advocate for the appellant.

Mr. Kuldeep Singh, Advocate for
Mr. Gopal Sharma, Advocate for respondent Nos. 1 to 4.

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *Whether to be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

Amit Rawal, J. (Oral):

Appellant-plaintiff is aggrieved of the judgment and decree dated 25.3.2010 rendered by the lower appellate court whereby the suit of the plaintiff has been dismissed. Mr. Sanjay Mittal, learned counsel appearing for the appellant-plaintiff, submits that Harnarayan was owner of House No.1417 situated in Mohalla Kayasthware, Rewari. On account of his death, his property devolved in half share each in favour of the plaintiff and defendant No.1 being his sons. However, defendants No.2 to 5 set up a Will dated 4.1.1993, registered on 5.1.1993, alleged to have been executed by Harnarayan in favour of Subhash, Vinod, Pawan and Manoj, defendants No.2 to 5, who are the sons of Deen Dayal, defendant No.1. The trial court, on the basis of evidence, discarded the Will by holding that it was surrounded by suspicious circumstances and decreed the suit.

However, the lower appellate court without referring to the evidence on record, held that even if the plaintiff was in possession of his share in the house, the same did not confer any title upon him to the extent of half share, dismissed the suit.

Learned counsel for the appellant, thus, urges to formulate following substantial questions of law, to be answered in this appeal:-

- (i) Whether the judgment and decree passed by the lower appellate court suffers from illegality and perversity?
- (ii) Whether the judgment and decree passed by the lower appellate court suffer from misreading and non appreciation of evidence, being the last court of facts and law as per Section 96 CPC?

Mr. Kuldeep Singh, learned counsel appearing for Mr. Gopal Sharma, counsel representing respondents No.1 to 4, submits that there is no illegality or perversity in the judgment rendered by the lower appellate court as the Will set up by defendants no.2 to 5, has duly been proved through testimony of Sunder Lal. As per Section 68 of the Indian Evidence Act, there is no prohibition to prove the Will even in the absence of the executor of the said Will or an interested witness. Even provisions of Section 63(C) of the Indian Succession Act were complied with and the Will being a registered one, cannot be ignored. The suit has been rightly dismissed. The plaintiff had been staying away from the house and has not been able to prove any document on record in this regard.

I have heard learned counsel for the parties and perused the record.

I am of the view that there is force in the contentions of learned counsel for the appellant for the reason that the lower appellate court has

not appreciated the documentary evidence. Ex.PA, PW3/A and PW3/2 are the telephone bills showing the telephone connection installed in the same very house. A perusal of the contents of the Will shows that the plaintiff was staying away from the house but there is factual error in the same. It is one of the suspicious circumstance. It is also a matter of fact that as per judgment Ex.PG, plaintiff-appellant Pyare Lal had filed a suit against his father Harnarayan and others. Though the said suit was dismissed but it has come on record that both the sons of Harnarayan, namely, plaintiff Pyare Lal and Deen Dayal were putting up together in the house in question. At this stage, it would be apt to reproduce the findings recorded by the trial court in para 15 of the judgment, which is to the following effect:-

“15. From the recital in the will, it is revealed that the testator of the will Har Narayan is stated to have excluded both his sons from this property. He has also mentioned in the will that his son Pyare Lal is residing separately from him and is not tendering any services to him. This will was executed on 4.1.1993 and was registered on 5.1.1993. From the oral as well as documentary evidence brought on record by the plaintiff it has been established that plaintiff and defendant No.1 both are coming in possession of the house in question since a long time that is since the time of their father namely Har Narayan. In such circumstances, this averment in the will that Pyare Lal is residing separately from Har Narayan is falsified. Possession of plaintiff Pyare Lal over the house in dispute is established on record from Ex.PG the copy of judgment dated 6.5.1994 passed in a civil suit titled 'Pyare Lal versus Har Narayan etc.' From para 12 of judgment Ex.PG it is evident that plaintiff and his brother Deen Dayal defendant No.1 were in possession of house No.1417. Besides this from written statement filed by defendants in that civil suit Ex.PW7/1 it is also revealed that possession of Pyare Lal and Deen

Dayal over the house in question was also not disputed. This civil suit No.1471 of 30.10.1992 filed by present plaintiff and defendant No.1 Deen Dayal for possession by way of partition though was dismissed as it was observed that the parties have already partitioned their proerty in pursuance of a partition which had taken place in the year 1967 and in that partition house No.1417 had fallen to the share of Har Narayan who had been residing therein along with their sons namely Pyare Lal and Deen Dayal. Moreover, from testimony of witness examined on record by plaintiff as well as defendants it stands established that possession of plaintiff over the suit house is not disputed. Plaintiff Pyare Lal when appeared in the witness box as PW11/A was given a suggestion that he is in possession of the house in question as a licensee under defendants No.2 to 5. This suggestion itself reveals that defendants have admitted possession of plaintiff over the suit house. Though, they have got up a new plea that possession of plaintiff is that of a licensee. Besides this DW5 Sunder Lal in his cros examination has admitted that Pyare Lal plaintiff is residing in the house in dispute along with his sons and is doing his business in the same. Similarly, one of the defendant namely Manoj son of Deen Dayal has examined as DW7 has also admitted that on the first floor of house in dispute plaintiff and his sons had been running their business and are residing in the rear portion of the same. Moreover, from the receipt of telephone bills Ex.PW3/A and Ex.PW3/2 pertaining to the year 1993 possession of plaintiff over the house in dispute is proved. Ex.PA receipt of Municipal Committee pertaining to house No.1417 in the name of plaintiff in the year 1980 also reveals possession of plaintiff over the same.”

However, the lower appellate court has not appreciated the aforementioned fact and thus erroneously upheld the Will by observing that the Will has been duly proved without noticing the aforementioned documentary evidence, thus, there is illegality and perversity in the impugned judgment rendered by the lower appellate court. The judgment

is not sustainable in the eyes of law and is hereby set aside.

In view of what has been stated above, the substantial questions of law are answered in favour of the appellant-plaintiff. The suit is decreed and the judgment of the trial court is restored.

RSA is allowed.

March 11, 2016.

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[Amit Rawal]
Judge