

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

**RSA No.4605 of 2011 (O&M)
Decided on: 16.02.2016**

Ajit Singh

....Appellant

Versus

Narinder Singh

....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Sandeep Verma, Advocate
for the appellant.

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?*

REKHA MITTAL J. (Oral)

The present appeal lays challenge to the judgment and decree dated 13.11.2010, passed by the Civil Judge (Junior Division), Nabha, whereby the suit filed by the respondent for possession has been decreed and the judgment and decree dated 12.08.2011, passed by the Appellate Court concurring with the findings recorded by the trial Court and as a result dismissing the appeal preferred by the appellant.

The facts relevant for disposal of the present appeal are that Narinder Singh, the real brother of the appellant filed a suit for possession of the property detailed in headnote of the plaint on the

premise that he is the sole owner of the property on the basis of a Will executed by his father Bhagwan Dass and the question of Will has already been decided *inter se* the parties by the Additional Civil Judge (Senior Division), Nabha, vide judgment and decree dated 30.11.1994. It is averred that the appellant-defendant has been using the suit property with his consent but now the respondent requires the suit property but the defendant has refused to hand-over its possession.

The appellant-defendant filed the written statement admitting the relationship between the parties. Bhagwan Dass did not execute any Will in favour of the respondent and the Will alleged by the respondent is a forged and fabricated document. However, he admitted that the suit property was owned by Bhagwan Dass and has been inherited by him being his son after his death. He further admitted that the earlier suit filed by the respondent was partly decreed and rights and interests of the parties were decided but he is the owner in possession of the suit property. He further averred that his possession over the suit property is hostile, continuous, open and peaceful for the last more than fifteen years and as such he has become owner by way of adverse possession.

On a thoughtful consideration of the rival contentions of the parties in the light of materials on record, the learned trial Court held in favour of the respondent, decreed his suit for

possession with a direction to the appellant-defendant to hand-over possession of the suit property to the respondent within two months from the date of decree. As has been noticed here-in-before, the findings recorded by the learned trial Court were affirmed in appeal.

Counsel for the appellant would contend that in the earlier suit filed by the appellant, culminated in the judgment and decree dated 30.11.1994, one of the properties described at Serial No.3 of the headnote of the plaint is a house with boundaries detailed therein bearing Unit No.B-3-708. In the said house, the appellant was held entitled to 1/5th share being one of the class one heirs of Smt. Bhagwan Devi, his mother. It is further submitted that as the suit property is a part of the property described at Serial No.3 in the earlier litigation, claim of the respondent to seek recovery of possession of the suit property has been wrongly and illegally allowed by the Courts below.

I have heard counsel for the appellant, perused the records and find no merit in the appeal.

Ajit Singh, the present appellant filed a suit for partition in respect of properties described at Serial Nos.1 to 4 in the earlier suit instituted in February, 1992 and decided vide judgment and decree dated 30.11.1994 (Annexures A-2 and A-3). Counsel for the appellant has not disputed that the Will dated 25.03.1988, subject-matter of the present suit was also the subject-

matter of the earlier suit and the said Will set-up by respondent-Narinder Singh was held to be legal and valid, executed by Sh. Bhagwan Dass in favour of Narinder Singh. The claim of the present appellant to inherit to the estate of Sh. Bhagwan Dass on the basis of natural succession was rejected and as a result his entitlement to seek partition of the suit properties either on the plea that the properties at Serial No.3 and 4 of the said suit are ancestral and co-parcenary or his entitlement to succeed to Sh. Bhagwan Dass on the basis of natural succession was rejected. However, the appellant was held entitled to 1/5th share in the property purchased by his mother Smt. Bhagwan Devi vide sale deed dated 01.05.1944 from Sardar Arjan Dass. In the property left behind by Bhagwan Devi, Sh. Bhagwan Dass, father of the parties was also held entitled to 1/5th share being the husband of Bhagwan Devi.

The appellant in the written statement has denied the Will in question with the plea that the same is forged and fabricated by disregarding the earlier judgment and decree passed in the year 1994 that has attained finality between the parties. As the question of inheritance to the estate of Sh. Bhagwan Dass already stands concluded in the earlier proceedings, the appellant is not entitled to agitate the same in the present case being barred by the principle of *res judicata*.

Counsel for the appellant has tried to confuse the issue by contending that the suit property is a part of the property earlier

owned by Smt. Bhagwan Devi. Be that as it may, Sh. Bhagwan Dass inherited 1/5th share out of the property left behind by Smt. Bhagwan Devi, his widow. The appellant in the written statement has candidly and categorically admitted that the suit property was owned by Sh. Bhagwan Dass and claimed his right on the basis of natural succession. There cannot be any better evidence than an admission made by a contesting party. As the appellant did not dispute ownership of Sh. Bhagwan Dass *qua* the suit property, contention raised by counsel cannot be looked into being a factual dispute. Not only this, the appellant raised a plea of ownership by way of adverse possession which also amounts to an admission of the appellant that the respondent is the owner of the suit property. Counsel has fairly conceded that there is no evidence on record to sustain plea of the appellant that he has become owner of the suit property by way of adverse possession. Analyzed from any angle, neither there is any error much less illegality in the findings recorded by the Courts below nor any substantial question of law, as has been sought to be raised or otherwise, arises for adjudication.

For the reasons afore-stated, the appeal sans merit and is accordingly dismissed. No order as to costs.

(REKHA MITTAL)
JUDGE

16.02.2016
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