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

RSA-834-2012 (O&M)

Date of decision : 02.08.2016

Lt. Col. Dr. Rajinder Singh Bhatia

... Appellant(s)

Versus

Amarjit Kaur and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. G.S. Bhatia, Advocate
for the appellant(s).

Mr. Krishan Singh, Advocate
for respondent Nos.1 & 3 to 5.

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?

AMIT RAWAL, J. (ORAL)

The appellant-defendant No.1 is aggrieved of the judgment and decree rendered by the lower Appellate Court whereby, the suit of the respondent(s)-plaintiff(s) has been decreed by interpreting the Will dated 04.05.1991 executed by Beant Singh Bhatia and she has been held to be entitled to 1/5th share in respect of House No.482-L-1 situated in Model Town, Yamuna Nagar.

The admitted facts are that Beant Singh Bhatia was the owner of the aforementioned house. He was married to Ram Kali Bhatia. Out of loin, Lt. Col. Dr. Rajinder Singh Bhatia-defendant No.1 and five daughters were born out. Respondent No.1-Amarjit Kaur is one of the daughters, who

was unmarried. Beant Singh Bhatia, during his life time, executed a Will dated 04.05.1991 bequeathing life-interest of the aforementioned property, in favour of his wife Ram Kali Bhatia and after her death, in favour of their son i.e. defendant No.1. Respondent No.1-plaintiff instituted a suit for declaration and possession claiming 1/5th share by invoking the provisions of Section 14(1) of the Hindu Succession Act, 1956 (hereinafter called 'the 1956 Act'). The trial Court dismissed the suit by upholding the Will, but the lower Appellate Court rejected the second part of the Will and held that Ram Kali Bhatia had acquired the absolute ownership. It is, in this background of the matter, the appeal at the instance of the defendant No.1 has been filed by raising the plea that there was no pre-existing right as it was self-acquired property of Beant Singh Bhatia and therefore, provisions of Section 14 (2) of the 1956 Act would apply and the property would devolve upon the son. Ram Kali Bhatia did not transfer or alienate the property during her life-time and she died on 12.05.1999. Having not taken the advantage, she would not have become absolute owner. The expressions device in sub-Section 1 of Section 14 of the 1956 Act cannot be equated with the Will as provided in sub-Section 2.

Mr. G.S. Bhatia, learned counsel appearing on behalf of the appellant-defendant No.1, during the course of the argument does not dispute the ratio decidendi culled out by the Hon'ble Supreme Court in **“Jupudy Pardha Sarathy V/s Pentapati Rama Krishna and others” 2016 (1) RCR (Civil) 1** and submits that since, the appellant-defendant No.1, who is residing in the house, is willing to compensate the respondent No.1-plaintiff as per the provisions of the Partition Act, 1893, thus, urges this

Court for modification of the judgment and decree to this limited extent.

Mr. Krishan Singh, learned counsel appearing on behalf of respondent Nos.1, 3 to 5 submits that since appellant-defendant No.1 has conceded the ratio decidendi culled out by the Hon'ble Supreme Court in **“Jupudy Pardha Sarathy's case”** (supra) as Ram Kali Bhatia had acquired absolute ownership as per the provisions of Section 14 (1) of the 1956 Act, it is of a widest possible amplitude and cannot be read conservatively, in essence, the provisions of sub-Section 2 of Section 14 of the 1956 Act have been read and interpreted to the proviso of sub-Section 1 and therefore, rightly so, the lower Appellate Court has decreed the suit by granting 1/5th share. He on instructions from the client, who is present in Court submits that he is not willing to accept the compensate part and wants to have separate possession, thus, urges this Court for affirming the findings, under challenge.

I have heard the learned counsel for the parties and appraised the paper book.

Maintaining the decree of the lower Appellate Court would result into further disgruntlement between the siblings as it is conceded position on record that the aforementioned house is in occupation of the son who is living with his family and all other sisters have given an affidavit in favour of appellant-defendant No.1 except respondent No.1-plaintiff. By seeking a separate possession, it would tantamount to disturbing the possession of the family of defendant No.1. In view of recital of the Will, Ram Kali Bhatia had become absolute owner as per provisions under sub-Section 1 of Section 14 of the 1956 Act, rightly so, respondent No.1-

plaintiff has been held to be in ownership of 1/5th share.

Keeping in view the peculiar facts and circumstances of the case, I intend to invoke the provisions of Sections 3 and 4 of the Partition Act, 1893 envisaging the situation that in case, respondent No.1-plaintiff after attaining the finality of the judgment and decree may not transfer her 1/5th share to a third party being disgruntful towards her brother. In such a situation, I deem it appropriate to issue a direction to the Executing Court who shall further follow the procedure as envisaged by ascertaining the market-value of the property and thereafter, determine 1/5th share in terms of the money.

Accordingly, the judgment and decree of the lower Appellate Court is hereby modified, with the aforementioned observation, and the rest of the findings rendered in judgment and decree are hereby affirmed upholding the absolute owner of Ram Kali Bhatia.

The appeal stands disposed of in the aforementioned terms.

02.08.2016
yogesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned ☒ Yes/ No

Whether Reportable ☒ Yes/ No