

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

**R.S.A No.3762 of 2016 (O&M)
Date of decision :03.08.2016**

Bimal Kumar

..... Appellant

Versus

Guljinder Singh

..... Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Ms. Puja Chopra, Advocate
for the appellant.

DARSHAN SINGH,J

The present appeal has been preferred against the judgment and decree dated 17.08.2015 passed by learned Additional District Judge, Ludhiana, whereby the appeal filed against the judgment and decree dated 08.02.2013 passed by the learned Civil Judge (Jr. Division), Ludhiana, has been dismissed.

2. For the sake of convenience, the status of the parties is being mentioned as in the original suit.

3. The appellant-plaintiff has filed the suit for declaration to the effect that he is owner in possession of land measuring 5B-13-B-6B Pukhta, comprised in Khewat no. 148, 181, 255, Khatauni No. 179, 214, 294, Khasra No.943, 924/1, 945, 944 as per jamabandi for the year 2004-2005, situated at Village Lohara Hadbast no. 260, Tehsil and District

Ludhiana. In consequential relief, he has sought the decree for permanent injunction restraining the defendant-respondent from alienating and further interfering in peaceful possession of the plaintiff over the property in dispute.

4. As per the averments in the plaint, the land in dispute was owned by Shardha Nath Chela Shri Hukam Chad being Ba-itamam of Khuhi Partape Wali, Village Lohara Tehsil and District Ludhiana. Shri Shardha Nath appointed Shri Balwant Nath as his Chela. Said Balwant Nath was taking care of the entire property on behalf of Shardha Nath. Shardha Nath died on 02.03.1975. After his death, Balwant Nath succeeded his entire estate on the basis of inheritance. There is a Thakardwara in the suit land and Balwant Nath being head of said Thakardwara was taking care of all the suit land. However, he failed to get the mutation sanctioned in his name in the revenue record. Balwant Nath appointed the plaintiff as Chela and the plaintiff was looking after Balwant Nath in his old age. He was very happy with his services and being satisfied with his services, he bequeathed the suit land in favour of the plaintiff by executing the legal and valid Will dated 09.04.2001 in his sound disposing mind in the presence of the marginal witnesses. Balwant Nath expired on 20.10.2003. After his death, the plaintiff is taking care of the entire suit land and also looking after the Thakardwara. The defendant in the garb of some forged Will dated 15.07.2003 approached the revenue authorities for sanctioning of the mutation in his favour, but the said mutation was held as disputed. Now, the defendant is threatening to dispossess the plaintiff from the suit land and to alienate the same. Hence

the suit.

5. Defendant-respondent did not appear to contest the suit and was proceeded against ex-parte.

6. On appreciating the evidence on record and the contentions raised by learned counsel for the parties, the learned trial Court dismissed the suit vide impugned judgment and decree dated 08.02.2013.

7. Aggrieved with the aforesaid judgment and decree, he preferred the appeal. The same has also been dismissed by the learned First Appellate Court, vide impugned judgment and decree dated 17.08.2015. Hence, this Regular Second Appeal.

8. I have heard Ms. Puja Chopra, Advocate, learned counsel for the appellant and have carefully gone through the paper book.

9. Imitating the arguments, learned counsel for the appellant contended that execution of the Will dated 09.04.2001 by deceased-Balwant Nath in favour of the plaintiff is not disputed. The plaintiff has led sufficient evidence to establish the execution of the Will dated 09.04.2001. She contended that whatever right Balwant Nath was having have been acquired by the present appellant by way of the Will dated 09.04.2001. She contended that the learned Courts below were not justified to dismiss the entire suit of the plaintiff. The plaintiff could have been given the relief which is permissible under law on the basis of the Will dated 09.04.2001 executed by Balwant Nath in favour of the appellant.

10. I have duly considered the aforesaid contentions.

11. The plaintiff has filed the suit for declaration to the effect

that he is owner in possession of the land in dispute on the basis of the Will dated 09.04.2001 executed by Balwant Nath, Chela of Shri Shardha Nath in his favour. He is also claiming the decree for permanent injunction in the consequential relief on the basis of title. Thus, in order to seek the relief of declaration as well as injunction, the plaintiff was required to establish his title qua the suit property.

12. There is no dispute that the Will dated 09.04.2001 executed by Balwant Nath in favour of the plaintiff can only convey whatever rights the executant of the Will was having. So, we have to see as to whether Balwant Nath and prior to him Shri Shardha Nath were the owner of the property in dispute or not. The Jamabandi Ex.P-8 for the year 2004-2005 shows that the land in dispute is mentioned as Khuhi Partpawali Ba-itamam Shardha Nath Chela Hukam Chand. But, Shardha Nath was only mentioned as Ba-itamam of Khuhi Partpawali. It shows that the ownership of the property in dispute vests in Khuhi Partpawali. Said Shardha Nath was only acting as a Manager of the said property without having any ownership rights. So, Shardha Nath could not have bequeathed the ownership rights of the suit property in favour of Balwant Nath and consequently the Will executed by Balwant Nath in favour of the plaintiff also cannot convey any title to the suit property in favour of the appellant. He was also merely acting as Supervisor/Manager of the suit property. Thus, the plaintiff is not entitled for declaration as well as injunction as prayed for.

13. Consequently, I do not find any reason to differ with the concurrent findings recorded by the learned Courts below.

14. Resultantly, the present appeal being devoid of merits, is hereby dismissed in *limine* with no orders as to costs.

August 03, 2016

s.khan

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No