

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

**C.M. NOS.6671-72 C OF 2015 &
R.S.A. NO.2585 OF 2015
DATE OF DECISION: JANUARY 22, 2016**

Shivaji Nanda

.....Appellant

VERSUS

Ashok Kumar and others

....Respondents

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASI

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

**Present: Mr. Samir Rathaur, Advocate,
for the appellant.**

AUGUSTINE GEORGE MASI, J. (ORAL)

C.M. No.6671 C of 2015

Application is allowed.

Document, Annexure A-1, is taken on record.

**Exemption is also granted from filing certified and typed copy
of Annexure A-1.**

C.M. No.6672 C of 2015 & R.S.A. No.2585 of 2015

**Challenge in this appeal is to the judgement and decree dated
16.01.2013 passed by the Additional Civil Judge (Senior Division),
Jalandhar, whereby the suit filed by the appellant-plaintiff, directing
respondent-defendant No.1, Ashok Kumar and Dhiraj Nanda, respondent-
defendant No.6 to distribute the estate of late Sh.Lahori Ram in the shape of**

his share in business, good-will, stock, capital, interest, profits etc. of business of M/s Lahori Ram Ashok Kumar and for possession of 1/2 share of the shop alongwith tenancy rights in the shop of M/s Lahori Ram Ashok Kumar situated in Lal Bazar, Jalandhar City amongst the appellant-plaintiff and respondent-defendant Nos.2 to 5 and in alternative suit for rendition of accounts against respondent-defendants of M/s Lahori Ram Ashok Kumar and possession of 1/2 share of the shop in dispute alongwith its tenancy rights, stands dismissed, appeal against which preferred by the appellant-plaintiff also stands dismissed by the Additional District Judge, Jalandhar, on 27.02.2015.

It is the contention of learned counsel for the appellant that the Courts below have not properly appreciated the pleadings and evidence, which have been brought on record. He contends that the tenancy of the premises in the name of Lahori Ram and Ashok Kumar has been established as per the rent note. It has also come in the evidence that both of them were working together and doing the business of goldsmith, where sale and purchase of silver and gold ornaments alongwith other valuable stones were being carried out. He contends that the finding of the Courts below that there is no firm by the name of M/s Lahori Ram Ashok Kumar cannot sustain and deserves to be set-aside. Assertion has further been made that the alleged Will dated 03.05.1994 executed by Sh.Lahori Ram bequeathing his share in the tenancy and the business in favour of his grandson Dhiraj Nanda, respondent-defendant No.6, cannot sustain as the said Will is shrouded with suspicion and cannot be termed to be a valid document, especially when no reason has been assigned for dis-entitling the other legal heirs of their share in the property. He also states that there are various

discrepancies in the statement of the attesting witness, namely, Bachan Singh, Numberdar (DW2), who has stated that he was not aware of the house of Sh.Lahori Ram and also gave the year of death of Sh.Lahori Ram as 1984-85 whereas he had died in the year 1999. He, thus, prays that the appeal may be allowed by setting-aside the impugned judgements and decree passed by the Courts below and suit of the appellant-plaintiff be decreed.

I have considered the submissions made by learned counsel for the appellant and with his able assistance have gone through the impugned judgements.

The relationship between the parties is not in dispute. The appellant-plaintiff alongwith respondent-defendant Nos.2 to 5 are real brothers. Respondent No.6, Dhiraj Nanda, is son of respondent-defendant No.3-Prem Pal Nanda i.e. grandson of Lahori Ram. Ashok Kumar was working alongwith Lahori Ram, father of appellant-defendant.

An assertion has been made by the appellant that there was a firm by the name of M/s Lahori Ram Ashok Kumar, of which his father, namely, Sh.Lahori Ram and Ashok Kumar were having half share each in the tenancy of the property as also in the business of jewellery. This firm was being run from the tenanted premises situated in Lal Bazar, Jalandhar City. To prove this assertion, the onus was on the appellant-plaintiff, which he has failed to discharge as no document has been produced on record, which could be co-related with the tenanted premises, showing it to be a firm i.e. M/s Lahori Ram Ashok Kumar being run from Lal Bazar, Jalandhar City. In fact, the Life Insurance policies and U.T.I bills, Exhibits P2 to P40, which have been relied upon by the appellant-plaintiff for depicting the

existence of the firm of M/s Lahori Ram Ashok Kumar pertained to a different premises i.e. SCF-82, New Grain Market, Jalandhar, whereas the tenanted premises is located in Lal Bazar, Jalandhar City. Reliance was also placed upon the written statement dated 04.09.2004, wherein it was stated by Sh.Ashok Kumar that Lahori Ram was not owner of the entire business of M/s Lahori Ram Ashok Kumar. This also does not support the existence of M/s Lahori Ram Ashok Kumar at the tenanted premises. The income tax returns, which have placed on record of the trial Court, indicate that Lahori Ram and Ashok Kumar were filing their separate individual income tax returns in their personal names. Similarly, Dhiraj Nanda, who had been working with his grandfather, Lahori Ram, had also filed his separate income tax return, copies of which have been produced on record as Exhibits PW5/A, Ex.PW5/B and Ex.PW5/C. The Courts have rightly concluded that if there would have been a firm in existence under the name and style of M/s Lahori Ram Ashok Kumar, the income tax returns would have been filed in the name of said firm. Whatever evidence has been placed on record by the appellant-plaintiff, does not prove the existence of the firm M/s Lahori Ram Ashok Kumar in the tenanted premises.

In the light of the above, the conclusion drawn by the Courts below with regard to the claim of the appellant for distribution of the profits, interest, capital, good-will and share in the tenanted premises of the firm does not arise at all.

The evidence, which has come on record, shows that the business, which was being run by Lahori Ram and Ashok Kumar was of repair of ornaments. The appellant, who appeared as PW1, has further stated in his cross-examination that he did not know if there was any partnership

deed executed. PW2 Narinder Verma stated that he has got done the work of making the ornaments from Lahori Ram and further stated that he had not seen any partnership deed. It is asserted that sale and purchase of gold ornaments and other precious stones and articles was part of business but neither any receipt with regard to sale of ornaments nor any bills have been placed on record regarding purchase of gold ornaments or other articles, which would indicate business of sale and purchase of gold ornaments carried out at the premises in question by Lahori Ram and Ashok Kumar.

It may not be out of place to mention here that the appellant admitted that he had filed a civil suit regarding partition of movable and immovable property of Sh.Lahori Ram and in that suit no relief with regard to present property/claim has been made. The Courts have, therefore, rightly come to the conclusion that the present separate suit is not maintainable as it is barred under Order 2 Rule 2 C.P.C.

As regards the Will dated 03.05.1994, Ex.D1, the legality and validity whereof has been challenged primarily on the ground that the statement of DW2 Bachan Singh, Numberdar, who is the attesting witness, does not inspire confidence, suffice it to say that the said Will has not been challenged as such in the present suit, despite the same having been taken as a ground in defence. The appellant-plaintiff in spite of having come to know about the same, posed no challenge to it. However, the discrepancies, as have been mentioned in the statement of the attesting witness, Bachan Singh, Numberdar, cannot be said to be material, which would render the Will to be declared as illegal, especially when the said Will is a registered one and its due execution has been proved.

That apart, in the Will itself, the executor, Lahori Ram, has

given reasons why he was executing the said Will in favour of his grandson, Dhiraj Nanda. It has been specifically mentioned that Dhiraj Nanda had been working with his grandfather and looking after him. Not only that, he had been admittedly going to the shop in question since the year 1989 alongwith his grandfather and doing the work with him. Apart from that, it has come on record that Lahori Ram had cordial relations with his sons and daughters. Specific reasons having been assigned for executing the will in favour of his grandson, Dhiraj Nanda, which fact has further been proved on the basis of evidence brought on record, explains the reason for bequeathing the rights in his favour. Merely because there is nothing mentioned with regard to exclusion of the other legal heirs, who could have also been entitled to the benefit of the said tenancy and the business of repair of ornaments in the facts and circumstances of the present case, would not be seen with suspicion. The legality and validity of the Will, Ex.D1 having been upheld by the Courts below, cannot be faulted with.

It may not be out of way to mention here that the appellant-plaintiff has to stand on his own legs with regard to the proof as has been pleaded by him. The evidence, as brought on record and discussed above, leads to the conclusion that the appellant-plaintiff has failed to do so and, therefore, the judgements passed by the Courts below do not call for any interference by this Court.

Both the Courts below have returned concurrent findings after properly appreciating the pleadings and evidence brought on record by the parties and the same cannot be interfered with as there is no perversity or illegality in the same.

No substantial question of law is involved in the present appeal.

Therefore, finding no merit in the present appeal, the same stands dismissed.

Since the main appeal stands dismissed, C.M. No.6672 C of 2015 for staying the operation of the impugned judgements and decree is also dismissed.

**January 22, 2016
khurmi**

**(AUGUSTINE GEORGE MASIH)
JUDGE**