

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

R.S.A. No.2900 of 2015 (O&M)

Date of decision: 18.02.2016

Pran Nath

...Appellant

Versus

Mulakh Raj

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. K. S. Rekhi, Advocate for the appellant.

Jitendra Chauhan, J.

This regular second appeal is directed against the judgment and decree dated 02.01.2015, passed by the learned Additional District Judge, Pathankot, (for short, the 'first Appellate Court') in civil appeal No.25/62 of 2008/2014 whereby, the appeal filed by the appellant, against the judgment and decree dated 18.03.2008, passed by the learned Civil Judge, (Jr. Divn.), Pathankot, (for short, the 'trial Court') in civil suit No.353 of 1998, has been dismissed.

Brief facts of the case are that the appellant filed a suit for partition by metes and bounds with averment that he and defendant Mulakh Raj were joint owners in possession of the house marked ABCD, shown in red colour in the site plan, situated in

village Bhoa, District Pathankot. It was averred that the house in question was an ancestral property as it was built by the forefathers of the appellant and the defendant. Since the defendant wanted to grab more than his share in the property, the appellant prayed for separation of his share through partition but the same was refused by the defendant.

Hence, the present appeal.

The learned counsel states that being brothers, the appellant and the respondent are joint owners in possession of the house in question. The appellant is one of the legal heirs of the deceased Madho Ram and thus, is entitled to $\frac{1}{2}$ share in property left by him. The learned Courts below have not considered the suspicious circumstances regarding the execution of the Will dated 31.08.1992, made by their late father, Madho Ram in favour of the defendant as no marginal witness was produced in the Court to prove the Will. It is further submitted that the property being ancestral, therefore, no will could be executed regarding the entire property. Hence, the judgments and decrees passed by the learned Courts below are liable to be set aside.

I have heard the learned counsel and carefully perused the entire record.

From the perusal of the record, it emerges that the appellant, during his cross examination, had admitted that his father,

Madho Ram, deceased, had not attended the marriage ceremonies of his children, as the appellant did not mention the name of his father in the invitation cards. Further, it is admitted by the appellant that the defendant had carried out repairs of the house in dispute after the demise of his father and the appellant is not in possession of any part over the house in dispute. Except the bald statement of the appellant, no documentary evidence has been led to prove that the house in dispute is an ancestral property. As far as the validity of the execution of the will dated 31.08.1992 is concerned, DW1-Subhash Padam, Tehsildar, in his testimony has stated that the alleged will was produced before him by the deceased, Madho Ram on 31.08.1992 and he (Subhash Padam) along with two attesting witnesses, namely, Ishar Dass and Hari Kishan had put their signatures upon the same. Furthermore, DW2-Raj Kumar, registration clerk, categorically stated that the will was registered as a document No.186 Bahi No.3 & Jild No.3 Page No.5153 on 31.08.1992 and the DW3-Ved Mittar S/o Ishar Dass has identified the signature of his father upon the will. Moreover, DW4-Dina Bandhu, verified the signatures of both the attesting witnesses and stated that they have since died. He further admitted the possession of the defendant over the house in dispute. In addition to this, DW5-Gurbax Singh deed writer, also substantiated the case of the defendant and stated that he had scribed the will at the instance of the

deceased, Madho Ram and admitted that the same was signed by both the witnesses, the entry in his register at Serial No.601 dated 31.08.1992 was carried out by him. In view of the aforementioned evidence on record, this Court feels that the learned Courts below have rightly held that the suit land is not ancestral, but it is a self acquired property of the Madho Ram and he rightly executed the will dated 31.08.1992 in favour of the defendant. Accordingly, this Court finds no fault in the findings recorded by the learned Courts below. These are pure findings of fact. In **Karnail Singh Vs. Piara Singh**, 2002(3) RCR (civil) 442, it was held that a questions regarding the share of a person in a property on the basis of registered Will cannot be said to be a question of law, much less a substantial questions of law. Hence, no interference is called for.

Dismissed in limine.

18.02.2016

ashok

(JITENDRA CHAUHAN)
JUDGE