

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

RSA No.2693 of 2014 (O&M)
Date of decision : 29.02.2016

Kashmiri Lal

...Appellant

Versus

Sunil Kumar and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

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

Present: Mr. Nitin Jain, Advocate for the appellant.

Mr. Arun Jindal, Advocate for the respondents.

AMIT RAWAL, J. (Oral)

CM No.2601-C of 2016

For the reasons stated in the application, which is duly supported by an affidavit, application is allowed.

Right to Information Application (Annexure A-1) and reply received from Tehsildar's office (Annexure A-2), as additional evidence are placed on record, subject to all just exceptions.

Main case

The appellant-defendant is aggrieved of the judgment and decree rendered by the lower Appellate Court, whereby appeal has been

dismissed, in essence, judgment and decree passed by the trial Court, has been upheld.

Mr. Nitin Jain, learned counsel appearing on behalf of appellant submits that claim in the suit was for partition, declaration and permanent injunction and defendants had set up the counter claim of declaration on the basis of Will dated 03.09.1985. Both the Courts below have committed illegality and perversity in observing that original Will has not been produced. He further submits as per order recorded in the zimni order dated 04.10.2011 that mutation file was summoned.

Zimni order dated 04.10.2011, reproduced here as under:-

“Pal Singh Office Kanongo is present and produced file No.43/CMT decided on 18.3.2009 regarding Mutation No.4490. His separate statement in this regard recorded. One DW is also present and examined in chief. On request the case is adjourned to 28.10.2011 for cross examination of present DW and for entire evidence of the defendant subject to last and final opportunity.

Sd/- CJSD/4.10.11”

Both the Courts below failed to notice the aforementioned fact and thus, there is illegality and perversity and matter requires to be reconsidered by the lower Appellate Court. He further submits that after the order, the record of the mutation proceedings was inspected by invoking the provisions of Right to Information Act and as per the information provided, it has surfaced that original Will is part of the record of the mutation proceedings.

Mr. Arun Jindal, learned counsel appearing on behalf of respondents submits that despite aforementioned fact, appellant-defendant

has failed to prove the averments vis-a-vis counter claim and rightly so, rejected by the trial Court. He has drawn the attention of this Court to Ex.D3 i.e. order dated 27.08.2009 passed by the Collector Patiala to contend that Original Will had already been lost and, therefore, this information obtained under the Right to Information Act is not correct.

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

I am afraid that arguments of Mr. Jindal, has no substance as I have gone through order Ex.D3, which is at page No.100 of the trial Court record as it pertains to the submission of the counsel for the parties as well as Kashmiri Lal and not vis-a-vis the findings on Will, whereas, on the contrary as per the information sought under the Right to Information Act Annexure A1 coupled with zimni order dated 04.10.2011 irresistible conclusion is drawn that file of the mutation proceedings was summoned and the original Will is part of the record, therefore, the findings rendered by the lower Appellate Court that original Will has not been proved is totally fallacious, much less, mis-appreciation and mis-reading of the record and thus following substantial question of law arises:-

1. Whether the judgment and decree of the lower Appellate Court suffers from illegality and perversity.

Information sought under RTI Act, 2015 is reproduced here as under:-

*“In the office of Public Information Officer-cum-Tehsildar
Rajpura*

To

Kashmiri Lal son of Ram Saroop

Village Chhappar, Sub-Tehsil Ghanaur

Tehsil Rajpura, District Patiala

Memo No.3765/D K dated 17.11.2015

Subject:- Information under RTI Act, 2015.

Ref. With reference to your application dated 06.11.2015

With reference to the letter captioned as subject you are being informed that mutation No.4490 Waka Rakba Village Chhappar Hadbast No.336, Sub-Tehsil Ghanaur, Tehsil Rajpura was decided by worthy Assistant Collector, Ist Grade Rajpura in file No.43/CMT Rajua Filing date 25.08.2008/15.07.2014, vide decision dated 18.03.2009/05.09.2014. In this there is one original Khangri Will dated 03.09.1985 which has been executed by Ram Swarup son of Ram Ji Dass in favour of Kashmiri Lal son of Ram Swarup. This original Will is annexed with the file. On this original Will Ex.A1 is marked.

*Sd/- Tehsildar
Rajpura.”*

Lower Appellate Court being the last Court of facts and law is competent to re-examine the evidence and as well as to re-appreciate the law.

Keeping in view the aforementioned facts, impugned judgment and decree of the lower Appellate court is set aside. Matter is remitted back to the lower Appellate Court to decide the appeal afresh preferably within a period of four months from the date of receipt of certified copy of this order.

Parties through their counsel are directed to appear before the lower Appellate Court on 28.03.2016.

Appeal stands disposed of.

29.02.2016

pawan

**(AMIT RAWAL)
JUDGE**