

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

-.-

RSA 4190 of 2014 (O&M)
Date of decision: 01.06.2016

Gurdial Singh

..... Appellant

Versus

Baljit Singh and other

.....Respondent(s)

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. Abhay Gupta, Advocate
for the appellant

-.-

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

Rekha Mittal, J.

Challenge in the present appeal has been laid to the consistent findings recorded by the Courts below whereby suit of the appellant/plaintiff was dismissed by the learned trial Court vide judgment and decree dated 13.08.2010 and the appeal preferred against the judgment and decree passed by the trial Court came to be dismissed by the Additional District Judge, Ludhiana vide the judgment and decree dated 06.01.2014.

The appellant/plaintiff prayed for a decree of possession on the basis of inheritance and title qua house No. 3315 measuring 175 square yards, fully described in headnote of the judgment passed by the learned trial Court with the plea that Kehar Singh was married to Sham Kaur but no issue was born out of their wedlock. The plaintiff is the real nephew of

Sham Kaur. Sham Kaur owned agricultural land and residential property at village Gill-2 Dugri and Sarihn, Tehsil and District Ludhiana. After death of Kehar Singh, a dispute arose in respect of the estate left by him between Sham Kaur widow of Kehar Singh and legal heirs of Smt. Parsini, sister of Kehar Singh. However, a settlement was arrived at and Sham Kaur became owner in possession of half share of the entire estate of Kehar Singh and half share went to the heirs of Parsini. Sham Kaur was residing in the property in dispute along with the plaintiff. She in lieu of services rendered by the plaintiff and out of love and affection executed two gift deeds in respect of area 2B-19B-08 pukhta and 2B of land situated within revenue estate of village Dugri, Ludhiana. She also executed a valid and genuine Will in favour of the plaintiff on 29.09.1971 and the plaintiff became owner of the estate left behind by Sham Kaur after her demise on 30.07.1975. After death of Sham Kaur, mutation of inheritance was sanctioned in favour of the plaintiff on the basis of registered Will dated 29.07.1971.

Gian Singh being grandson of Kehar Singh and on account of his poor financial status was allowed to live in the disputed house as a caretaker. After death of Sham Kaur, old construction was demolished by the plaintiff and three rooms were constructed. The plaintiff allowed Harpal Kaur to live in the property on her assurance that she will hand over the possession whenever the plaintiff would be in need of the same. In May 2001, the respondents/defendants started collecting building material and Harpal Kaur proclaimed herself to be owner of the property in question on the basis of agreement to sell and general power of attorney, purported to be executed by Gian Singh. It is further averred that Gian Singh was not competent to execute any agreement in favour of Harpal Kaur.

On completion of pleadings of the parties, the learned trial Court framed issues for determination and permitted the parties to adduce evidence in support of their respective claims. After having heard counsel for the parties in the light of materials on record, the trial Court rejected plea of the appellant that he is entitled to possession of the suit property being owner thereof either on the basis of gift deeds or will purported to be executed by Smt. Sham Kaur. The appellate Court concurred with the findings recorded by the trial Court on all material aspects and as a result, the appeal was dismissed.

Still feeling aggrieved, the matter has been carried in appeal before this Court.

The appellate Court has accepted plea of the appellant that he is related to Sham Kaur being her nephew and said fact is also mentioned in gift deeds Ex.P14 and Ex.P16. However, it has been noticed by the Court that the gift deeds executed by Sham Kaur do not relate to the suit property and this fact is admitted by the plaintiff himself during his cross examination. It has further been held that the Will purported to be executed by Sham Kaur in favour of the plaintiff has not been proved in compliance with the requirements of the Indian Evidence Act, 1872.

The sole submission made by counsel for the appellant is that as the learned trial Court did not frame any specific issue qua registered Will dated 29.09.1971, the judgments passed by the Courts below are liable to be set aside after framing a specific issue on the question of Will and thereafter the matter should be remitted to the trial Court for adjudication afresh.

I have heard counsel for the appellant and perused the

judgments passed by the Courts below.

The appellant filed the suit for possession claiming himself to be owner thereof on the basis of registered Will dated 29.09.1971 purported to be executed by Sham Kaur in his favour. It is an undisputed position of the case that two gift deeds registered on 07.03.1973 and 09.03.1973 set up by the appellant do not pertain to the suit property. The learned trial Court framed issue Nos. 1 and 2 with regard to entitlement of the plaintiff/appellant to the relief claimed and the same reads as follows:-

1. *Whether the plaintiff is entitled to decree for possession on the basis of title?OPP*
2. *Whether the plaintiff is entitled to decree for permanent injunction as prayed for?OPP*

As the trial Court has framed an issue in regard to entitlement of the plaintiff to a decree for possession on the basis of title and the title has been claimed by the appellant on the basis of registered Will dated 29.07.1971, I find it difficult to accept contention of the appellant that the judgments and decrees passed by the Courts below are liable to be set aside and the matter needs to be remitted to the trial Court for adjudication afresh after framing of an additional issue qua the Will in question. Counsel for the appellant is not in a position to advance any convincing argument as to how the non-framing of an issue on the question of Will, in the circumstances of the present case, can justify setting aside the judgments of the Courts below and remitting the matter to the trial Court for adjudication afresh. As a matter of fact, the parties knew their case well and adduced evidence by understanding the disputed question of facts and law involved in the case. An unsuccessful litigant cannot be allowed to reopen the matter

by taking advantage of his failure to adduce relevant evidence at an appropriate stage of the proceedings.

No other point has been raised.

In view of what has been discussed herein-above, finding no merit, the appeal fails and is accordingly dismissed with no order as to costs.

(Rekha Mittal)
Judge

01.06.2016
mohan bimbra