

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 6052 of 2014 (O&M)

Date of Decision : 15.12.2016

Baldev Raj

....Appellant

Versus

Rajinder Parshad and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

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

Surinder Gupta, J.

The dispute pertains to House No. 439 (new) 355 (old) B-XVI, situated at Mohalla Nanakpuri, Miller Ganj, Ludhiana, owned by Rattan Devi, who has died leaving behind appellant and respondents no. 1 to 8 as her successors-in-interest.

2. Plaintiffs-respondents no. 1 to 8 filed suit seeking the relief of partition of the suit property as per their share. They also sought the relief of permanent injunction restraining the appellant and other defendants, who are respondents no. 9 and 10 in this appeal, from selling, alienating or transferring the suit property. The suit was decreed by learned Civil Judge (Junior Division), Ludhiana and the appeal filed by appellant-Baldev Raj was dismissed by Ist Appellate Court.

3. It is not disputed that the disputed house was owned by Rattan Devi and the parties to suit are her successors-in-interest.

4. Plaintiffs have claimed exclusive title over the area of 117 sq. yards out of the suit land on the basis of affidavit of Rattan Devi dated 13.11.1979, which reads as follows:-

"Affidavit

I, Rattan Devi widow of Shri Mukhtiar Chand, resident

of House No. B. XVI/355 Nanakpuri, Millerganj, Ludhiana, do hereby solemnly affirm and declare as under:-

- 1) *That one of my sons Shri Baldev Raj is separate from me and he is doing service at Muktsar.*
- 2) *That out of this plot his share of land is 117 sq. yards.*
- 3) *That my share of this plot is 233 sq. yards.”*

5. Learned counsel for the appellant has argued that this affidavit is not a registered document and both the Courts below have discarded the same on the ground that it cannot be taken as a document of transfer of title with regard to 117 sq. yards area in the disputed house by Rattan Devi in favour of appellant. If this document cannot be taken as a transfer deed, the same can be taken as a Will of Rattan Devi conferring on appellant title of 117 sq. yards of area out of suit property.

6. On giving a careful thought I do not find myself in agreement with contention of learned counsel for the appellant. Will is a document, which operates after the death of a person and is required to be signed by two marginal witnesses. Affidavit executed by Rattan Devi stating share of the appellant in the disputed house cannot be taken as her Will.

7. Both the Courts below have considered the plea raised by learned counsel for the appellant and have rightly discarded this affidavit as transfer deed of 117 sq. yards area in the disputed house in favour of the appellant.

8. No substantial question of law, requiring determination, arises in this appeal, which has no merit.

Dismissed.

December 15, 2016
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No