

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

RSA No. 1608 of 2012 (O & M)

Date of Decision:-26.04.2017

Shiv Kumar

...Appellant

Versus

Surinder Mohan Walia and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. A.C. Jain, Advocate
for the appellant.

Mr. Vaibhav Sahni, Advocate
for respondent No.1.

Mr. R.S. Ahluwalia, Advocate
for respondent No.3.

HARI PAL VERMA J.

The appellant-plaintiff Shiv Kumar has filed the present regular second appeal against the judgment and decree dated 12.1.2012 passed by learned District Judge, Amritsar, whereby his appeal against the judgment and decree dated 31.8.2010 passed by learned Additional Civil Judge (Sr. Divn.), Amritsar was dismissed.

Briefly stated, the appellant (hereinafter called 'the plaintiff') had filed a suit for possession by way of partition of the property bearing No.2857 to 2859 (old number), 272/6-2 & 388/6-2 (new number), situated

in Loha Mandi, Tunda Talab, Amritsar with a consequential relief of permanent injunction restraining the respondent/defendant No.1 from alienating the suit property in any manner and from changing its nature. As per the plaintiff, Smt. Satya Wati widow of late Shri Bhola Nath was the original owner of the property in question. She died on 04.1.2000. The plaintiff and defendants No.1 to 6 are the children of said Satya Wati and surviving legal heirs, as her husband had pre-deceased her. During her lifetime, she had executed a Will dated 09.10.1998, registered on 26.10.1998 in favour of plaintiff and defendant Nos.1 to 6. One of her son Prem Nath and her husband Bhola Nath had pre-deceased her. After the death of Satya Wati, plaintiff and defendants No.1 to 6 became owners of the suit property on the basis of Will dated 09.10.1998. Prem Nath died on 11.12.1999. Plaintiff and defendant No.2-Smt. Dheeraj Kumari are in possession of second floor of the property, whereas defendant No.1 was in possession of one shop on the ground floor, and some portion on the first floor of the property in dispute. The plaintiff does not want to keep his share joint with other defendants and as such requested defendant No.1 for separation of his share, but defendant No.1 has not been acceded to his request. Instead of separating share, the defendant No.1 threatened the plaintiff to dispose of the property to other persons to which he has right being owner of 1/7th share in the property.

Defendants appeared and filed their separate written statements. Defendant No.1 has filed written statement that during her life time Satya Wati sold the property in dispute in favour of Smt. Adarsh Walia

daughter of Shri Ram Murti for a consideration of Rs.2,10,000/- vide registered sale deed dated 22.8.1999. The plaintiff was not in possession of the property as after sale, Smt. Adarsh Walia became owner in possession of the property in dispute. Smt. Satya Wati had earlier appointed defendant No.1 as her lawful attorney vide power of attorney dated 18.8.1999, which was registered on 19.8.1999 and on the basis of the power of attorney executed by Smt. Satya Wati, the property in question had been sold for a valid consideration to Smt. Adarsh Walia. At the time of death of Smt. Satya Wati, she was no more owner of the property in dispute. The execution of the Will dated 09.10.1998 was denied that the plaintiff was entitled to claim only 1/7th share in the property. Similarly, other defendants have filed their written statements.

Apart from the other issues, the trial Court had formulated the following issues :-

“1. Whether the plaintiff is co-sharer in the suit property on the basis of succession as well as on the basis of Will dated 09.10.1998 executed by Smt. Satya Wati in favour of all the legal heirs ? OPP

2. If issue No.1 proved whether the plaintiff is entitled to possession by way of partition ? OPP

XXX XXX
XXX XXX”

While dealing with these issues, the learned trial Court has observed as under :-

“30. The factum of sale deed having been executed by Satya Wati in favour of Smt. Adarsh Walia is admitted

by the plaintiff in his cross-examination and he has stated in his cross-examination as being correct that sale deed was executed by defendant No.1 in favour of Adarsh Walia. Under such circumstances where plaintiff admitted the sale deed to have been executed by Satya Wati during her life time in favour of one Adarsh Walia and as a result never challenging the said sale deed or the power of attorney executed by Satya Wati in favour of defendant No.1 who thereafter executed a valid sale deed in favour of Adarsh Walia, plaintiff under circumstances cannot claim the property owned by Satya Wati now deceased to have been inherited by him as well as defendants No.1 to 6 on the basis of Will dated 09.10.1998. In fact Smt. Satya Wati after execution of sale deed Ex.D2 had no right left in the suit property and accordingly plaintiff was not entitled to claim succession on the basis of Will or possession by way of partition and issues are therefore, decided against the plaintiff and in favour of the defendants.”

Thus, the sale deed executed by Satya Wati in favour of Adarsh Walia has not been disputed by the plaintiff. The learned trial Court dismissed the suit vide judgment and decree dated 31.8.2010 and observed that the Will in question was executed by Smt. Satya Wati on 09.10.1998 and she died on 4.1.2000. Whereas, as per the version of defendants No.1, 5 and 6, Satya Wati sold the property vide sale deed dated 22.8.1999 and therefore, she was not owner of the property in dispute, therefore, the question of inheritance on the basis of Will does not arise.

Aggrieved against the said judgment and decree dated 31.8.2010 passed by learned Additional Civil Judge (Sr. Divn.), Amritsar,

the plaintiff had filed an appeal, but the same was also dismissed vide judgment and decree dated 12.1.2012 passed by learned District Judge, Amritsar.

It is in the aforesaid circumstances, the present regular second appeal has been filed.

Learned counsel for the appellant has argued that apart from the fact that both the Courts below have committed a legal error while dismissing the suit of the plaintiff, the Courts below have also failed to establish that Smt. Satya Wati expired on 4.01.2000 and till then the appellant was never informed about the alleged power of attorney as well as the resultant sale deed in question. The Courts below have further failed to appreciate that in case the property was purchased by Smt. Adarsh Walia on 22.8.1999, why Smt. Adarsh Walia did not take steps to get physical possession of the property in question. The handing over of property by the seller to the buyer is a pre-requisite condition of execution of the sale deed. The Courts have not only decided the issue No.1 wrongly, rather have formulated the said issue incorrectly. There was no dispute that the appellant-plaintiff is the son of Smt. Satya Wati and she had executed a legal and valid Will dated 09.10.1998 in favour of plaintiff and respondents No.1 to 6, whereby all the seven beneficiaries had equal shares in the property. It is, therefore apparent that appellant No.1 Surinder Mohan Walia with a view to grab the whole property of Smt. Satya Wati, fabricated the power of attorney from Smt. Satya Wati in his favour on 18.8.1999, within a period of four days of execution of the sale deed in favour of Smt.

Adarsh Walia, who is wife of respondent No.1, for a sum of Rs.2,10,000/- on 22.8.1999.

On the other hand, learned counsel for respondent No.3 has argued that there is no illegality in the judgments passed by the Courts below. Smt. Satya Wati had executed a Will on 09.10.1998 whereas the sale deed was executed on 22.8.1999. She died on 4.1.2000.

I have heard learned counsel for the parties.

Before the Will may come into operation, Smt. Satya Wati had already sold the property on 22.8.1999 and there is no challenge to this sale deed. Therefore, this Court finds that there is no illegality in the concurrent findings of facts recorded by both the Courts below. Smt. Satya Wati had executed a sale deed dated 22.8.1999 in favour of Smt. Adarsh Walia and the plaintiff has admitted this fact in his cross-examination and the fact that sale deed was executed by Satya Wati during her life time and said sale deed has not been challenged by the plaintiff or the power of attorney, executed by Satya Wati, this Court finds that there is no illegality in the aforesaid judgments and decrees passed by both the Courts below. Smt. Satya Wati during her life time had appointed Surinder Mohan Walia as her attorney vide power of attorney dated 18.8.1999 and on the basis of power of attorney, Surinder Mohan Walia had executed a sale deed in favour of Smt. Adarsh Walia on 22.8.1999 for a sum of Rs.2,10,000/-, therefore, at the time of her death, Satya Wati was not having any right or interest in the suit property as Smt. Adarsh Walia on the basis of sale deed dated 22.8.1999 had become owner in possession of the suit property. The sale

deed has not been challenged by the plaintiff. Though there is a recital of sale deed dated 22.8.1999 in the written statement but no efforts have been made by the plaintiff to get the written statement amended, which shows that he has admitted the very factum of the sale deed. Thus, when there is no challenge to the sale deed dated 22.8.1999, the suit was rightly dismissed.

It being a case of concurrent finding of facts recorded by the Courts below, no interference is warranted.

No other point has been argued.

No substantial question of law is involved in the present regular second appeal. Therefore, the impugned judgments and decrees passed by the Courts below are upheld and the present regular second appeal is dismissed.

April 26, 2017
Vijay Asija

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No