

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

RSA No.4853 of 2011

Date of decision:16.5.2017

Rama Nand

...Appellant

Versus

Vijay Laxmi

...Respondent

RSA No.4854 of 2011

Rama Nand

...Appellant

Versus

Chander Parkash and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Ram Bilas Gupta, Advocate for the appellant.
Mr.J.P.Sharma, Advocate for the respondent in
RSA No.4853 of 2011 and for respondent No.1 in
RSA No.4854 of 2011.

RAMESHWAR SINGH MALIK, J. (Oral)

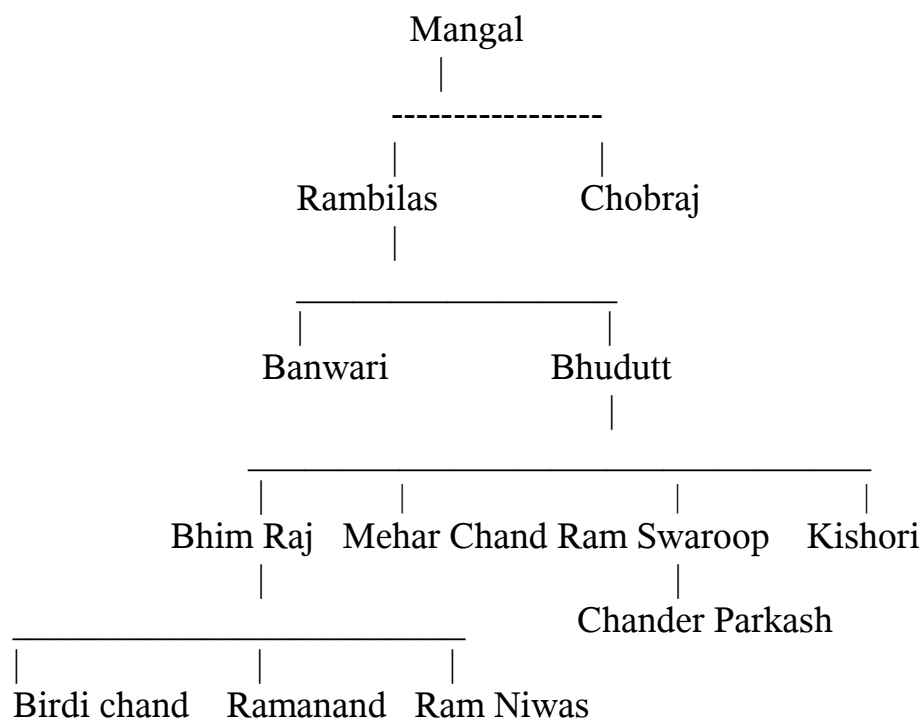
These two identical regular second appeals are being decided together, vide this common order, with the consent of learned counsel for the parties, as both these appeals are arising out of similar set of facts.

However, for the facility of reference, facts are being culled out from RSA

No.4853 of 2011.

Feeling aggrieved against the impugned judgment of reversal dated 10.8.2011 passed by the learned Additional District Judge, whereby first appeal of the defendants was allowed, dismissing the suit for permanent injunction, plaintiff has approached this Court by way of instant regular second appeal.

The facts of the case may be better appreciated with the help of following pedigree table :-



Brief facts of the case, as noticed by the learned first appellate Court in paras 2, 3 and 4 of the impugned judgment, are that the bone of contention was gatwar (hereinafter referred as plot in dispute), shown in red colour in the site plan Ex.P1 annexed with the plaint. It was not disputed that as per the revenue record Ex.D1/T and Ex.D2, D2/T the aforesaid plot in dispute bearing no.210 was owned and possessed by common ancestor of the parties i.e. Mangal. The appellant Chander Parkash pleaded that as per the partition which was reduced into writing Ex.PW15/A and which

took place in the month of Magh Sudhi 15, Samwat 2009 Vikrami between Bhudutt and his sons; the plot in dispute came in the share of Ramsarup-appellant's father. Ramsarup vide decree dated 27.3.1989 Ex.PB gave the plot in dispute to his son Chander Parkash (appellant). The appellant in Civil Suit No.365 RT of 1998/2007 stated that he was owner in possession of the plot in dispute since the passing of the decree Ex.PB in his favour. The respondents Ramanand and others who had no right, title and interest in the plot in dispute be permanently restrained from interfering in his peaceful possession over the plot in dispute and from alienating the same.

The respondents Ramanand and others pleaded that Ramsarup vide writing dated 22.4.1985 Ex.DW1/A gifted the plot in dispute to Ramanand and since then Ramanand was in possession of the plot in dispute. Ramsarup having already gifted the plot in dispute to Ramanand on 22.4.1985 could not have suffered the decree Ex.PB dated 27.3.1989 in favour of his son-appellant Chander Prakash because on the date of decree Ramanand was not at all the owner of the plot in dispute and by way of decree Ex.PB being an un-registered document had no value and did not transfer any right in favour of the appellant. The plea of Ramanand having become owner of the plot in dispute by way of adverse possession on the basis of gift deed dated 22.4.1985 had also been raised by the respondents. The respondents Ramanand and others pleaded that Ramanand alone was the owner of the plot in dispute. Consequently, Ramanand in the civil suit No.788A RT of 1998/2000 prayed that appellant Chander Parkash and his father Ramsarup be permanently restrained from interfering in his peaceful

possession and from alienating the plot in dispute.

On completion of pleadings of the parties, learned trial Court framed the following issues:-

1. Whether the plaintiff is owner in possession of the suit property? OPP.
2. Whether the suit is not maintainable in the present form? OPD.
3. Whether the plaintiff has no locus standi to file the suit? OPD.
4. Whether the plaintiff has no cause of action for filing the present suit? OPD.
5. Relief.

With a view to substantiate their respective stands taken, both the parties led their oral as well as documentary evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that the plaintiff-Chander Parkash in Civil Suit bearing No.365-RT of 1998/2007 failed to prove his suit. Accordingly, said suit was dismissed. However, civil suit filed by the plaintiff-appellant Rama Nand bearing No.788A-RT of 1998/2000 was decreed by the learned trial court, vide its common judgment and decree dated 6.12.2007.

Two appeals came to be filed by Chander Parkash. His prayer was for decreeing his Civil Suit bearing No.365-RT of 1998/2007 and in the second appeal, he was seeking dismissal of the suit filed by the present appellant. Both the appeals came to be allowed by the learned first appellate court vide its impugned judgment and decree dated 10.8.2011. Thus, these two regular second appeals at the hands of the plaintiff.

Heard learned counsel for the parties.

A bare combined reading of both the impugned judgments rendered by the learned courts below will make it crystal clear that as per the evidence available on record, Chander Parkash-plaintiff duly proved his case, by leading cogent and convincing evidence, whereas appellant-plaintiff/ Rama Nand failed to prove his case. This was the reasons that the learned first appellate court rightly allowed both the appeals filed by Chander Parkash, who was the plaintiff in one case and defendant in second case. Since the learned trial court misdirected itself, while not appreciating the evidence in correct perspective, the learned first appellate court rightly allowed both the appeals of Chander Parkash. Having said that, this Court feels no hesitation to conclude that the learned Additional District Judge was well within his jurisdiction to pass the impugned judgment and decree and the same deserve to be upheld.

In fact, the factual position is hardly in dispute. Chander Parkash was rightly found owner in possession. There was sufficient available on record which clearly goes to establish that plaintiff-appellant/Rama Nand miserably failed to prove his pleaded case. Testimony of Handwriting Expert Vijay Rustogy, as PW-1, who duly proved his report as Ex.DW1/1 was not properly appreciated by the learned trial Court.

On reappraisal of the pleadings as well as the evidence, the learned first appellate court came to a definite conclusion that plaintiff-appellant Rama Nand had no case right from day one either on facts or in law. Under these facts and circumstances of the case, it can be safely

concluded that the learned first appellate court committed no error of law, while passing the impugned judgment and decree and the same deserve to be upheld, for this reason also.

Before arriving at its judicious conclusion, the learned first appellate court rightly examined, considered and appreciated true facts of case as well as the evidence available on record, in correct perspective. The relevant and cogent findings recorded by the learned first appellate court in paras 12 to 14 of its impugned judgment, which deserve to be noticed here, read as under:-

“The argument that Ramsarup or appellant Chander Parkash have nowhere assailed the authenticity of the writing Ex.DW1/1 is fallacious because Ramsarup PW15 in his testimony in pursuance to the suggestion given to him by the respondents has stated that it is wrong that he has gifted the plot in dispute to his nephew Ramanand. It is also wrong that in this regard, he wrote a writing on 22.4.1985 for the purpose of record. A suggestion has also been given by the appellant Chander Parkash to the scribe of the writing Ex.DW1/1, Birdi Chand (DW1) that for the purpose of grabbing the plot in dispute they have prepared a forged document. The aforesaid suggestion by the appellant to Birdi Chand DW1 in no way tantamount to an admission of the appellant that the writing Ex.DW1/1 bears the signature of Ramsarup as has been stated by the ld. Trial Court. On the contrary it tantamount to disputing the authenticity of the writing Ex.DW1/1 purported to be executed by Ramsarup. The fact that the writing Ex.DW1/1 does not bear the signature of Ramsarup has been proved by appellant Chander Parkash with the help of the testimony of handwriting expert PW12 who has placed aforesaid report, the writing Ex.DW1/1 does not bear the signature of Ramsarup.

The writing Ex.DW1/1 was placed on record by respondent Ramanand DW2 in his testimony on 30.7.2007. The attesting witness of the aforesaid writing Ex.DW1/1, Hoshiar Singh DW3 testified before the court on 17.8.2007 but the aforesaid writing Ex.DW1/1 was never shown to him. Therefore, the testimony of Hoshiar Singh DW3 that writing dated 22.4.1985 was signed by Ramsarup is of no help to the respondent Ramanand and others. Here it is pertinent to mention that Hoshiar Singh DW3, the attesting witnesses of writing Ex.DW1/1 in his testimony has stated that he has not seen the writing because he is an illiterate person. The another fact that makes the testimony of Hoshiar Singh DW3 doubtful is that he in his testimony has stated that by virtue of writing dated 22.4.1985 Ramsarup gave 1/4th share in gatwar (plot in dispute) to respondent Ramanand whereas in writing dated 22.4.1985 Ex.DW1/1, there is no recital that Ramsarup gave his 1/4th share in the plot in dispute to respondent Ramanand. The mere fact that PW14 Raghubir Singh in his testimony has stated that appellant Chander Parkash stayed in his house as well as in his well, does not in any manner bring home the respondents case that respondent Ramanand is in possession of the plot in dispute. Even otherwise, the writing Ex.DW1/1 does not in any manner confer any right, title or interest in the plot in dispute in favour of respondent Ramanand because it is an unregistered document and it also does not bear the signature of respondent Ramanand. In the absence of the signature of the respondent Ramanand on the writing Ex.DW1/1, it can not be stated that a valid contract for transfer of plot in dispute in favour of Ramanand was made because there is nothing on record to show that Ramanand accepted the gift of the plot in dispute in his favour by Ramsarup. Therefore, in the absence of acceptance of respondent

Ramanand, no valid gift of the plot in dispute took place by way of writing Ex.DW1/1 is proved.

The crux of the above discussion is that appellant Chander Parkash by virtue of the testimony of hand writing expert PW12 Vijay Rustogy has succeeded in proving that writing Ex.DW1/1 does not bear the signature of Ramsarup and Ramsarup in his testimony has also denied the execution of writing Ex.DW1/1. The writing Ex.DW1/1 is an invalid and incomplete piece of document being not bearing the signature of respondent Ramanand and being an unregistered document. For the foregoing reasons the rulings which have been relied upon by the counsel for the respondents are of no help to the respondents.

This court has already adjudicate that writing Ex.DW1/1 did not transfer any right, title or interest in favour of respondent Ramanand, therefore, the decree Ex.PB dated 23.7.1989 was right suffered by Ramsarup in favour of his son appellant Chander Parkash. The plot in dispute was ancestral property. The appellant Chander Parkash had a pre-existing right in the plot inn dispute, therefore, there was no necessity of any registration of the decree Ex.PB. Consequently, appellant Chander Parkash is owner in possession of the plot in dispute by virtue of decree Ex.PB dated 23.7.1989.”

During the course of arguments, learned counsel for the appellant could not point out any patent illegality or perversity in the impugned judgment and decree passed by the learned first appellate court, while recording its concurrent findings of facts. He also could not refer to any question of law much less substantial question of law nor any such question of law has been found involved in the present appeal, which is *sine qua non* for entertaining any regular second appeal, at the hands of this

Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this view of the matter, no interference is warranted in the present appeal. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in Maryann ***Rajendran Vs. Sarojini Lakshmy, 2009 (2) RCR (Civil) 286*** and ***Snatch Hazier Versus Purshottam Toward, 2001 (3) SCC 179.***

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the instant appeal is bereft of merit and without any substance, thus, it must fail. No case for interference has been made out. Consequently, the impugned judgment and decree passed by the learned first appellate court are upheld.

Resultantly, with the above-said observations made, the present regular second appeal stands dismissed, however, with no order as to costs.

16.5.2017

(RAMESHWAR SINGH MALIK)

mks

JUDGE

Whether Speaking/reasoned : Yes/No

Whether Reportable : Yes/No