

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

**RSA No.697 of 2016 (O&M)
Date of Order: 24.08.2017**

Master Komaljot Singh

..Appellant

Versus

Surinder Singh and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms. Gehna Vaishnavi, Advocate,
for the appellant.

ANIL KSHETARPAL, J(Oral)

Plaintiff is in regular second appeal against concurrent findings of fact arrived at by the Courts below.

Plaintiff filed a suit for mandatory injunction against defendants to quit, vacate and hand over the peaceful possession of ground floor of property bearing house no.L-10/26, Gali No.14, Tirath Pura, Kot Harnam Dass, Sultanwind Road, Amritsar. Plaintiff claimed that the registered will was executed by Uttam Singh, grand father in his favour and on the strength of that Will he has become exclusive owner of the house.

The trial Court noticed that original Will has not been produced and proved on the file. A look at the issues would also shows that no issue with respect to validity of the Will was framed by the trial Court. Hence the suit filed by the plaintiff was dismissed.

In appeal, learned first appellate Court after re-appreciating the evidence held that the plaintiff should file a suit for possession and plead as well as prove the Will. The suit for mandatory injunction is not

maintainable. Learned first appellate Court further granted injunction to the plaintiff and his mother protecting their possession from the first floor of the house in question, which is in their possession.

In the present case, neither the original will has been produced nor there is any issue on the validity of the Will. Learned trial Court has further found that the will is not proved on the file. Since, there is no issue with respect to the validity of the Will, therefore, finding, if any, would not operate as resjudicata.

In these circumstances, I do not find any good ground to interfere with the concurrent findings of fact arrived at by the Courts below. The regular second appeal is ordered to be dismissed.

However, as observed earlier, plaintiff would be at liberty to file a suit for possession, if so advised.

August 24, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No