

104.

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

RSA-3699-2014 (O&M)

Date of decision:24.01.2017

Kunti Devi

... Appellant

versus

Yashpal (since deceased through his LRs) and others Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. R.S. Longia, Advocate,
for the appellant.

HARI PAL VERMA, J.

The appellant-defendant has filed the present regular second appeal against the judgment and decree dated 31.03.2014 passed by learned Additional District Judge, Ludhiana whereby her appeal against the judgment and decree dated 18.04.2013 passed by learned Civil Judge (Senior Division), Ludhiana was dismissed.

Respondent-plaintiff, namely, Yashpal had filed a suit for declaration to the effect that he is owner and in possession of suit property, in question, and has also prayed for permanent injunction restraining appellant-defendant No.1-Kunti Devi from alienating, transferring or making any change or demolishing or in any other manner creating any change in the property in dispute. He had also sought decree for mandatory injunction directing respondent No.6-Municipal Corporation, Ludhiana to correct the record by entering the name of plaintiff as owner of the portion fully detailed in the plaint.

Briefly stated, the suit property was in joint ownership of Shri Jagan Nath (deceased), Kidar Nath-defendant No.2 and Amar Nath-defendant No.3. Jagan Nath died issueless and his wife Smt. Dwarka Devi stepped into his shoes and became joint owner along with defendants No.2 and 3, who subsequently partitioned the suit property orally and the portion shown as red and yellow on the ground floor in the site plan fell to the share of Jagan Nath (deceased) along with one Barsati on the 3rd floor and 1st floor portion & 2nd floor portion of the house No.B-IV-1270-1271 fell to the share of defendants No.2 and 3. Smt. Dwarka Devi also died on 07.02.1980 at Jalandhar and before her death, she had executed a Will dated 06.01.1980, bequeathing her property i.e. suit property in favour of plaintiff-Yashpal. The said Will dated 06.01.1980 was thereafter confirmed as having been validly executed in the proceedings filed by the plaintiff for obtaining succession certificate in Case No.78 of 1981 titled as “Yashpal Versus General Public” and succession certificate was granted in his favour. Smt. Dwarka Devi (deceased) had given her portion to a tenant, namely, Maharaj Kishan, who was the grandfather of defendant No.5, and in occupation of the property in dispute as a tenant under plaintiff who stopped paying rent and ejectment proceedings had been filed against him. The plaintiff being a resident of Jalandhar rarely visited Ludhiana to look after the property in dispute and taking advantage of his absence, appellant-defendant No.1 had started proclaiming herself as owner of the property, alleging that there is a Will in her favour by

Dwarka Devi and on the basis of this alleged Will, she was claiming herself to be the owner of the suit property, which is absolutely wrong. Dwarka Devi did not execute any Will in favour of appellant-defendant No.1 and, therefore, she has no right, title or interest in the suit property. Appellant-defendant No.1 in collusion with one Bimla Rani got filed a suit after fabricating/forging a rent note showing herself as landlord/owner of the property in suit.

Upon notice, defendants appeared and filed their respective written statements. Appellant-defendant No.1 filed her separate written statement contesting the suit of the plaintiff. She had taken preliminary objections that the respondent-plaintiff had no locus standi to file the suit; plaintiff had not disclosed any cause of action, suit had not been assessed properly for the purpose of court fee and jurisdiction, suit is not maintainable etc. On merits, it was submitted that the portion in dispute, which was in dilapidated condition, had not been properly shown in the site plan. No person by name Dwarka Devi ever became the owner in possession of suit property and the respondent-plaintiff had intentionally not given the date of partition of suit property or the date of death of Jagan Nath. In fact, the property was owned by Daropti Devi and she being a widow and issueless was looked after by appellant-defendant No.1 as she was dharam sister of Daropti Devi. Daropti Devi used to visit religious places frequently and sometimes remained at Rishikesh, Haridwar etc. for months together and during her lifetime, she executed a Will dated 06.02.1984 in favour of

appellant-defendant No.1 by virtue of which, the property in dispute was bequeathed in her favour. Daropti Devi had gone on a pilgrimage but never returned. Appellant-defendant No.1 obtained a declaration regarding death of Daropti Devi from the court of Civil Judge, Ludhiana and on the basis of said Will, the ownership was transferred in the name of appellant-defendant No.1 in the record of Municipal Corporation, Ludhiana. Defendant No.6-Municipal Corporation, Ludhiana filed separate written statement and the preliminary objection was raised that no notice under Section 396 of Punjab Municipal Corporation Act, 1976 had been served upon the Corporation before filing the suit and, therefore, the respondent-plaintiff had no cause of action. On merits, it was submitted that Smt. Dwarka Devi wife of Jagan Nath was shown owner in the house tax record and the appellant-defendant No.1 got decree in her favour from the court of Civil Judge (Junior Division), Ludhiana dated 23.01.2001 and got her name changed in house tax record of the Municipal Corporation, Ludhiana after filing the Will and other necessary record.

From the pleadings of parties, the trial Court framed the following issues:-

- “1. Whether the plaintiff is in possession of the suit property? OPP.
2. Whether the plaintiff is entitled to perpetual injunction restraining defendant No.1 from alienating the suit property? OPP
3. Whether the plaintiff is entitled to the injunction in mandatory form to direct the defendant

no.6 to correct the record? OPP

4. Whether the plaintiff has no locus standi to file the present suit? OPD

5. Whether the plaintiff is guilty of suppressing the truth? OPD

6. Whether the suit is properly valued for the purpose of court fee? OPD

7. Whether the suit is not maintainable in the present form? OPD

8. Whether the suit is bad for want of notice under Section 396 of Punjab Municipal Corporation Act? OPD6

9. Relief?”

The trial Court vide judgment dated 18.04.2013 decreed the suit of the respondent-plaintiff with costs, holding therein that he is owner and in possession of suit property and also defendant No.6-Municipal Corporation, Ludhiana was directed to correct the record by entering the name of plaintiff as owner of the suit property. The plaintiff was also held entitled to perpetual injunction restraining appellant-defendant No.1 from alienating, transferring or making any change or demolishing or in any other manner creating any change in the property in dispute.

Aggrieved against the aforesaid judgment, appellant-defendant No.1 filed an appeal before the learned Additional District Judge, Ludhiana. However, the said appeal was dismissed vide judgment and decree dated 31.03.2014.

Based on the aforesaid circumstances, the appellant-defendant has filed the present regular second appeal.

Learned counsel for the appellant has argued that the judgments and decrees passed by the courts below are against facts and law. Respondent-plaintiff had filed the suit seeking deceleration being owner and in possession of a portion of house/building at present bearing No.1270-1271, Block No.4 (Old No.B-IV-204). Further the respondent-plaintiff had sought permanent injunction restraining the appellant-defendant No.1 from alienating/transferring or making any change or demolishing or in any other manner creating any change in the dispute property. Pleading of respondent-plaintiff shows that it was the appellant-defendant No.1, who was in possession of the suit property. Moreover, the property in question was never owned by Dwarka Devi as it was owned by Daropti Devi wife of Jagan Nath and the name of Daropti Devi was duly entered in the record of Municipal Corporation, Ludhiana. The appellant-defendant was dharam sister of Daropti Devi. During her lifetime, Daropti Devi executed a Will dated 06.02.1984 in favour of appellant-defendant, by virtue of which, the property, in dispute, was bequeathed in favour of appellant-defendant. Respondent-plaintiff-Yashpal has no concern or connection with the property in question and the appellant-defendant is the owner and in possession of the property in question which was previously owned and possessed by Daropti Devi wife of Jagan Nath. Since the respondent-plaintiff had failed to prove on record that the property

belongs to Dwarka Devi, therefore, the suit was liable to be dismissed.

I have heard learned counsel for the appellant.

Both the courts below have returned a concurrent finding on facts. PW2-Brahm Dev, who is a grand son of Jagan Nath's father's sister, had deposed that Jagan Nath married with Dwarka Devi and resided with her at Mohalla Thapran. He used to visit Jalandhar to meet his wife's nephew, namely, Yashpal Sharma and during his lifetime, Jagan Nath never married any second lady except Dwarka Devi. Jagan Nath was owner of house in dispute to the extent of 1/3rd share. This witness had proved the relationship of the respondent-plaintiff with Jagan Nath. Therefore, on the basis of statement of this witness, it was proved firstly that the respondent-plaintiff was in close relation of Jagan Nath and secondly, Jagan Nath was married with Dwarka Devi only. Even the Will Ex.PW3/C executed in favour of Yashpal had been duly proved. PW4-respondent-plaintiff had also deposed that Dwarka Devi was owner in possession of the portion in dispute and she had executed a Will dated 06.01.1980 in her sound disposing state of mind in his favour and on the basis of said Will, respondent-plaintiff had obtained succession certificate. Since the very Will dated 06.01.1980 in favour of respondent-plaintiff has duly been proved by the attesting witness PW3-Inder Mohan Bhatia, who in his testimony has deposed that on 06.01.1980, Dwarka Devi had executed a valid Will in the presence of other witnesses, namely, Jugal Kishore and Vipin Modi, it can be concluded that Dwarka Devi-executant had

signed the Will, in the presence of witnesses and hence, the Will dated 06.01.1980 has been duly proved on file by the respondent-plaintiff.

No substantial question of law arises in the present regular second appeal.

In view of concurrent finding on facts by the courts below, this Court does not find any cause for interference in the present regular second appeal and the same is, accordingly, dismissed.

(HARI PAL VERMA)
JUDGE

24.01.2017
sanjeev

Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No