

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.1423 of 2017 (O&M)
Date of decision:- 10.08.2017

Rajesh and another

...Appellants

Versus

Ramesh Sharma and Others

...Respondents

BEFORE: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr.Manoj Makkar, Advocate, for the appellants.

RITU BAHRI, J. (Oral)

CM No.8690-C of 2017

Application is allowed, subject to all just exceptions.

Copy of documents i.e. Annexure P-2 are taken on record.

CM No.8691-C of 2017

Application is allowed.

The main case is taken up for today itself.

Main Case

The present appeal has been filed by the defendants Rajesh and others against the judgment and decree of the trial Court dated 15.07.2013 and learned appellate Court dated 04.02.2017 whereby, the suit of the plaintiff has been partly decreed to the extent that the plaintiff/respondent and appellant/defendants No.3 and 6 are owners of the 1/5th share of the property.

The brief facts of the matter are that Ram Richpal father of the plaintiff and defendants No.3 to 6 was owner in possession of a double storey house measuring 86.68 sq. yards bearing No.354/20, Sainipura, Rohtak, who purchased the said house prior to independence, thus, it was his self-acquired property. The house tax entry Ex.P/2 and Ex.P/3 existed in his favour in Municipal Committee, Rohtak. He died on 21.10.1992 leaving

behind the plaintiff and defendants No.3 to 6 (son and daughters) and Smt.Chhanno Devi (widow) as his legal heirs. Chhanno Devi expired on 01.12.2005, thus the plaintiff and defendants No.3 to 6 became owners the disputed house to the extent of 1/5th share. Defendant No.1 claimed to have become owner of the disputed house on the basis of a will Ex.PW4/A allegedly executed in his favour by Chhanno Devi, thus, he further transferred the said house in favour of his wife defendant No.2 vide gift deed dated 01.02.2007 Ex.P/1. The plaintiff assailed the impugned will dated 21.07.2005 Ex.PW4/A and gift deed dated 01.02.2007 Ex.P 1 illegal on the grounds that the disputed house was self-acquired of Ram Richpal which was inherited by his legal heirs equal shares. Thus, Channo Devi was not competent to execute the will in favour of defendant No.1 as she had no exclusive title therein and gift deed dated 01.02.2007 Ex.P/1 executed by defendant No.1 was a void document.

On 08.03.2008, the following issues were framed.

1. Whether the plaintiff is entitled to a decree for declaration as prayed for, with consequential relief of permanent injunction?OPP
2. Whether the suit of plaintiff is not maintainable?OPD
3. Relief.

To prove its case, plaintiffs examined Rajbir Singh Clerk, office of sub Registrar, Rohtak as PW1 who has brought the summoned record and proved gift deed dated 01.02.2007 Ex.P1, Mahabir Singh Clerk, M.C.Rohtak as PW2 who had brought the summoned record and proved copies of assessment register Ex.P2 and Ex.P3, Rajbir Singh Clerk Tehsil Office, Rohtak as PW4, who has also brought the summoned record and proved copy of Will Ex.PW4/A. Plaintiff Ramesh Sharma himself stepped into the witness box as Pw3 and tendered his affidavit Ex.PW3/A. Plaintiff also tendered documents death certificate of Chhanno Devi Ex.P4 and site plan Ex.P5. Thereafter, evidence of the plaintiffs was closed by Court order on 12.06.2009.

On the contrary defendant Rajesh himself stepped into the

witness box as DW1 and tendered his affidavit Ex.DW1/A. He further examined Vipul Saini, Advocate, Rohtak as DW2, Baljeet Singh, Record Keeper as DW3, Umesh Bhardwaj, Advocate as DW4, Ajit Singh, District Revenue Officer as DW5, Kanwar Bhan, Inspector Food and Supply, Rohtak as DW7. Thereafter, the defendants tendered documents i.e. Ex.DW2/A, Ex.DW3/A, Ex.DW3/B and Ex.DX and closed their evidence.

After going through the evidence led by both the parties, the trial Court held that Chhano Devi was owner of the property in question and she was not the exclusive owner and she divested the other legal heir from inheriting the property in dispute. She was not competent to execute the will, the said will is illegal and not binding on the rights of the plaintiff and defendants No.3 to 6. The will Ex.PW4/A and Ex.P1 were void, ab initio and were liable to be set aside and thus plaintiff and defendants No.3 and 6 were owners to the extent of 1/5th share. The plaintiff filed a separate suit seeking injunction against defendants No.1 and 2 for asserting his right of possession in view of the judgment in the case of **Krishan Singh Vs. Succha Singh 2008(2) CCC 755 (P&H)**. The trial Court however ordered that defendants No.1 and 2 were restrained to change the nature of the suit property and suit was dismissed partly qua the relief of permanent injunction restraining the defendants No.1 and 2 to interfere into his peaceful possession.

Learned appellate Court had affirmed the abovesaid findings given by the trial Court and it was held that the house tax assessment entry in the name of Smt.Chhano Devi and prior entry in the name of her husband Sh.Ram Richhpal could only prove that they were residing at suit property, but it could not be said that she was owner of the suit property. It had also not been brought on record as to on basis of which documents the entry in the name of Smt.Chhano Devi in the municipal record was entered. It was also held that the family members have inherited the suit property soon after death of Sh.Ram Richhpal since deceased so Smt.Chhano Devi was neither exclusive owner of the suit property nor had any exclusive right to bequeath the suit property inherited by all the legal heirs by their exclusion only in favour of defendant No.1.

After hearing counsel for the petitioners and going through the

record and evidence led by both the Courts have rightly returned to the findings that house in dispute was in the ownership of Ram Richhpal as per house tax entries Ex.P2 and Ex.P3 and after his death it could not be proved that the name of Chhano Devi in the municipal record was entered. Since Sh.Ram Richhpal was owner of the house under Section 8 of the Hindu Succession Act, after his death, the property shall be devolved upon legal heirs in equal shares. As such, both the courts had rightly observed that plaintiff/respondent and appellants /defendants No.3 and 6 or respondents No.2 and 5 herein are owners to the extent of 1/5th share each in the suit property. However, at the time of filing the suit plaintiff/respondent was not in possession of the suit property. So other efficacious remedy were available to him to assert his right of possession over the suit property and since, appellants/defendants No.1 and 2 are not owners so they were rightly restrained to change the nature of the suit property in any manner.

So in the light of the discussion and materials on records, no substantial questions of law arises out and the orders of the Courts below do not reflect any material irregularity or perversity which warranting interference. Hence the present appeal stands dismissed.

10.08.2017
anil

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No