

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

RSA No.1484 of 2017 (O&M)
Date of Decision: March 17, 2017

Krishna Devi & Anr.

..Appellant(s)

Versus

Brij Mohan Tandon

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

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

ANITA CHAUDHRY, J.

CM-3565-C-2017

For the reasons set out in the application, same is allowed as prayed for and delay of 52 days in filing the present appeal is condoned.

RSA No.1484 of 2017

This is the second appeal filed by the defendants aggrieved by the judgments passed by both the Courts below.

The plaintiff - Brij Mohan had challenged the sale deed dated 21.11.2005 executed by defendant no.2 in favour of defendant no.1 and was seeking possession of the suit property. The case set up by the plaintiff was that his grand mother namely Malan Devi owned the suit property, it was allotted to her by the Rehabilitation Department in 1962. Malan Devi was living with the father of the plaintiff. The plot

was constructed with the funds provided by plaintiff's father namely Jai Chand. Defendant no.1 was the real sister of Jai Chand, defendant no.2 is her husband. Malan Devi executed a Will in favour of the plaintiff on 06.07.1992. She died in August, 1993. The plaintiff went to Muscat for work. The plaintiff handed over the possession of the property to the defendants as a licensee as the grand mother could not be left alone. It was pleaded that he had asked the bank authority not to release the amount of FDRs of Malan Devi to anybody else but the defendants in connivance with the bank officials got the amount of FDRs released in their favour and started proclaiming themselves to be absolute owners of the property. It was pleaded that the sale deed effected by defendant no.2 in favour of defendant no.1 was null and void.

The defendants admitted the relationship and admitted that the property had been allotted to Malan Devi. It was pleaded that Malan Devi had two sons and two daughters. It was pleaded that the plaintiff was the grand son of Malan Devi and he left for Muscat and was living there for a long time and thereafter shifted to Faridabad and had been living there continuously for the last more than 30 years and during this period he never visited Malan Devi. It was pleaded that no Will had been executed by Malan Devi and the Will was surrounded by suspicious circumstance. It was pleaded that defendant no.1 used to serve Malan Devi and she executed a Will in favour of defendant no.2 on 26.06.1992 and after the death of Malan Devi, defendant no.2 had sold the property to defendant no.1 vide a registered sale deed.

The suit was partly decreed. The plaintiff was held to be the owner to the extent of 1/24 share. The sale deed executed by defendant no.2 in favour of defendant no.1 was held to be illegal and defendant no.1 was restrained from transferring the property.

The defendants filed an appeal. The Appellate Court discarded both the Wills and held that the estate of Malan Devi would devolve upon all the legal heirs by way of natural succession in equal shares. It was held that Malan Devi had two sons namely Jai Chand and Jasbir and two daughters and the estate would devolve upon her four children to the extent of 1/4 share each and in that manner the plaintiff had 1/24 share. It was also held that defendant no.1 was entitled to receive 1/4th share in the suit property. The sale deed dated 21.11.2005 was held to be illegal, null & void as defendant no.2 never owned the property. The findings recorded by the trial Court were affirmed and the appeal was dismissed.

I have heard the counsel for the appellants at great length and have also gone through the Will set up by the defendants.

The case of the defendants was that a Will had been executed by Malan Devi in favour of defendant no.2 but the defendants failed to examine the attesting witnesses to the Will. The trial Court recorded a finding that the Will in favour of the defendant no.2 had not been proved. As the Will was not proved, therefore, the subsequent sale made by defendant no.2 was rightly held to be illegal. Defendant no.2 could not pass on a better title than what he himself had. I find no

infirmity in the findings recorded by both the Courts below.

There is no merit in the appeal. The appeal is dismissed in
limine.

(ANITA CHAUDHRY)
JUDGE

March 17, 2017
sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No