

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA No.3980 of 2017 (O&M)

Date of decision: 18.08.2017

Rajender and others

..... Appellants

Versus

Parveen

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Robin Singh Hooda, Advocate
for the appellants.

ANIL KSHETARPAL, J. (ORAL)

CM-10119-C-2017

There is a delay of 301 days in filing the appeal.

For the reasons stated in the application, the same is allowed
and the delay of 301 days in filing the appeal is condoned.

RSA No.3980 of 2017

Defendants are appellants in the present Regular Second
Appeal against the concurrent finding of fact arrived at by the Courts
below.

Plaintiff-respondent filed a suit for permanent injunction
restraining the defendants from interfering in his peaceful possession of the
suit property. Plaintiff claims himself to be owner in possession of a house
measuring 90 sq. yards situated in village Jainpur, Tehsil and District
Sonapat. Plaintiff claimed that this property was gifted by his mother via a
registered gift deed dated 26.11.2008.

Defendants relied upon the registered Will dated 24.10.2008 executed by their grand-father Saudagar.

Learned trial Court after appreciating the evidence available on the file decreed the suit filed by the plaintiff. Appeal preferred by the defendant-appellant before the First Appellate Court has also been dismissed after re-appreciating the evidence.

Learned counsel for the appellants has submitted that the possession of the defendant-appellant is admitted by the plaintiff. Therefore, the suit filed by the plaintiff was liable to be dismissed. He has further submitted that the plaintiffs are living in Panipat whereas the property is situated in the village. Therefore, it is the defendants-appellants who are in possession of the property.

I have considered the submissions of learned counsel for the appellants and with his able assistance gone through the judgments passed by the Courts below.

Saudagar, the grand-father of the defendant had sold the property by registered sale deed in favour of Smt. Maheshwari, mother of the plaintiff vide sale deed dated 17.09.2007. Smt. Maheshwari had thereafter, gifted the aforesaid property to her son i.e. plaintiff vide gift deed dated 26.11.2008. Therefore, the Will of Saudagar dated 24.10.2008 would not improve the case of the defendant. During his life time, Saudagar has sold the property. Thereafter, Saudagar was not the owner of the property, hence, he could not bequeath the property through a Will.

Still further, I have examined the statement of plaintiff. In one stray line, plaintiff has admitted the possession of the defendant but in the very next line, the plaintiff has categorically stated that the plot in dispute is

situated ahead of the house of the defendant. The statement of the plaintiff has to be read as a whole. One line cannot be picked up in isolation to return the finding. On complete reading of the statement of the plaintiff, it is not possible to conclude that the plaintiff has admitted the possession of the defendants.

In view of the aforesaid discussion, I do not find any reason to interfere in the concurrent finding of fact arrived at by the Courts below.

Appeal is dismissed.

18.08.2017
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No