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

**RSA No.4650 of 2017 (O&M)
Date of Decision: 04.10.2017**

**Chandigarh Administration and Another
.....Appellants**

Vs

**Ajay Kumar
....Respondent**

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Sanjiv Ghai Advocate
for the appellants.

RAJ MOHAN SINGH, J.

[1]. Defendants are in Regular Second Appeal against the concurrent judgments and decrees passed by the Courts below in a suit for declaration with alternate plea of recovery of Rs.1,26,666/- filed by the plaintiff-respondent.

[2]. Brief facts are that a suit was filed by the plaintiff with the plea that previously a suit was filed by him against the same defendants in which the Civil Judge (Jr. Divn.) Chandigarh was pleased to direct the defendants to reconsider the case of the plaintiff by giving him personal hearing and then decide the same within a period of three months from 05.03.2011 and also to consider the entitlement of the plaintiff for allotment of

booth/shop in accordance with law. Pursuant to the said order, defendant No.2 passed the order dated 23.05.2011, rejecting the claim of the plaintiff on the ground that the plaintiff did not fulfill the basic criteria for the Scheme of allotment of site. The main ground on which the claim of the plaintiff was rejected was that as per survey of the year 1997, name of the plaintiff was not included in the survey list as he was not found working at the backside of SCO No.2415-16, Sector 22-C, Chandigarh.

[3]. The Scheme of 1996 was framed and the same was quashed on 10.12.1996 and thereafter new Scheme dated 17.02.1999 was published after survey of the year 1997. The survey was meant for clearing the encroachment of government land in Sector 21, 27 and 28, Chandigarh. The survey was conducted from 23.06.1997 to 30.06.1997. During survey conducted by the defendants, grandfather of the plaintiff namely Ram Kumar was found running a shop of tyres, auto-spare parts and repairs at the backside of SCO No.2415-16, Sector 22-C Chandigarh. Plaintiff was also working with his grandfather. Grandfather of the plaintiff died on 08.12.1997. He executed a Will in favour of the plaintiff on 24.07.1997. There was specific recital in respect of contingent rights in terms of allotment of booth/shop in favour of the testator. The aforesaid Scheme was floated on 17.02.1999. The Will dated 24.07.1997 was got

registered on 30.03.2001.

[4]. After the death of grandfather of the plaintiff, a communication was sent by the defendants in the name of Ram Kumar for depositing the amount for allotment of the site. The plaintiff deposited the earnest money in the capacity of beneficiary under the Will.

[5]. Learned counsel for the appellants tried to emphasize that issuance of communication to Ram Kumar on 23.03.2001 was not conclusive enough to determine his entitlement as the same was subject to fulfillment of number of requirements thereafter to be fulfilled by the prospective allottee.

[6]. I have heard learned counsel for the appellants.

[7]. Evidently, a contingent right was created by the testator in favour of the plaintiff/respondent by virtue of the Will in question. The admissibility of the Will was never questioned by the defendants in any such litigation, nor any counter claim was filed in the suit of the plaintiff, challenging the validity/veracity and genuineness of the Will. Inheritance/succession even on the basis of Will cannot remain in abeyance in the absence of any challenge made by any party. Since the Will was never assailed in any forum including the present suit wherein no counter claim was set up along with the written statement, the

eligibility of the plaintiff as per finding of fact recorded by both the Courts that the grandfather of the plaintiff namely Ram Kumar was found running a shop of selling tyres, auto spare parts and repair at the backside of SCO No.2415-16, Sector 22-C, Chandigarh in the survey conducted in the year 1997. The name of the Ram Kumar was duly reflected in the survey report. Said Ram Kumar submitted the proforma Ex.PW-3/6 for the allotment of booth along with affidavit PW-3/7. The requisite amount in the sum of Rs.1,40,740/- was received by the Estate Officer towards earnest money.

[8]. The claim of the plaintiff viz-a-viz. the allotment was not considered at the first instance by the defendants. It was only after the directions issued by the Civil Judge (Jr. Divn.) Chandigarh, in the first suit, the impugned order Ex.P-2 came to be passed whereby the claim of the plaintiff was rejected. The stand taken by the defendants in the earlier suit was that the grandfather of the plaintiff was a tenant in the premises and was running the business of spare parts and, therefore, he could not have executed any Will. The deposit of earnest money was subject to the decision of the Screening Committee. The claim of the plaintiff was rejected as he was found working within the premises of backside of SCO No.2415-16, Sector 22-C, Chandigarh and he was held not entitled for allotment of booth

and the said area was not included in the Scheme floated after Survey of the year 1997.

[9]. Both the Courts below have commented upon the dual contradictory stand taken by the defendants on different stages. If that was the stand of the defendants, then it could not explained by them on record as to why they included the name of the grandfather in the list, who was doing the work at the same site. The stand of the defendants that the list was only tentative list would not stand to test as the perusal of the provision of the Scheme titled as '*The Allotment of Sites on Lease hold basis to Auto Spare Part Dealers and Auto Repair Mechanics in Chandigarh, Scheme 1999*' as depicted in the written statement on record would show that there was no such provision made for barring of right of allotment in case of death of the applicant. Nothing could be brought on record as to how the legal representative(s) of the applicant could not have pursued the case for allotment on the death of the applicant after conduct of the survey and before the allotment of booth.

[10]. The defendants in the impugned order Ex.P-2 have admitted that the name of the plaintiff was not included in the survey list because his grandfather was enlisted in the survey and the plaintiff was working with his grandfather at that time. The aforesaid finding was conclusive enough to hold that the

plaintiff was working in the shop and his name could not be shown in the survey list only because the name of his grandfather was enlisted in the survey list *qua* the site where the plaintiff was working. Since this was a conceded position on record, therefore, the defendants cannot be permitted to deny the factum of transacting business of the plaintiff at the site where his grandfather was found to be enlisted candidate in the survey conducted by the defendants in the year 1997.

[11]. After the death of his grandfather, the plaintiff was very much entitled to succeed any contingent right given by his grandfather in the Will. The admissibility of the Will cannot be gone into in these proceedings in the absence of any challenge made by anyone. Since in the earlier litigation, the directions were issued to the defendants to reconsider the claim of the plaintiff, therefore, the objection with regard to jurisdiction of the Court was also answered in favour of the plaintiff. Even otherwise, if the Authority acts illegally, the civil Court has got all the jurisdiction under Section 9 CPC to set the order of the Authority right. Reference can be made to **State of Haryana and others vs. Vinod Kumar and ors., AIR 1986 P&H 407** and **Gurbax Singh vs. The Financial Commissioner & Anr., 1991 PLJ 192.**

[12]. Having considered the controversy, I am of the view

that the finding recorded by the Courts below could not be assailed by the appellants on merits. The finding of fact recorded by the Courts below cannot be diluted on the strength of arguments raised by learned counsel for the appellants while assailing the the validity of the Will at the stage of Regular Second Appeal. Since the Will was never questioned by the defendants, therefore, natural consequence of the Will is only to give effect to the same. There is no bar to create any contingent right based on happening or non-happening of a particular event. The recital of the Will is conclusive enough to cover the future allotment of the site in favour of the original candidate. Since the grandfather had already deposited the earnest money, therefore, the plaintiff has inherited/succeeded to the estate of his grandfather on the basis of the Will in question.

[13]. In view of above, no law point worth cognizance is involved in this appeal and the same is accordingly dismissed.

[14]. Since the main appeal is dismissed on merit, there is no need to adjudicate upon the application for condonation of delay of 209 days in filing the appeal.

October 04, 2017

Atik

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No