

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

**RSA No.5578 of 2017 (O&M)
Date of decision: 11.12.2017**

Kuldeep Singh

.....Appellant

Versus

Mayawanti and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Ms. Loveinder Kaur Brar, Advocate,
for the appellant.

Ritu Bahri, J.

CM-14749-C-2017

In view of the averments mentioned in the application, same is allowed and delay of 44 days in filing of the appeal is condoned.

RSA No.5578 of 2017

This appeal has been directed against the judgment dated 17.05.2017 passed by the Additional District Judge, Jalandhar, whereby appeal filed by plaintiff (appellant herein) against the judgment & decree dated 06.02.2015 passed by the Civil Judge (Junior Division), Jalandhar, has been dismissed.

Kuldeep Singh-plaintiff (appellant herein) filed the aforesaid suit alleging that the property in dispute, shown in red colour in the site plan, was owned and possessed by his father namely Harnam Singh, who died intestate in the year 1974 leaving behind the plaintiff and defendants as Class-I legal heirs and co-sharers in the property in dispute. A water connection bearing ID No.81739 was also installed in the name of plaintiff.

Defendant No.1 is the mother of plaintiff, whereas defendant Nos. 2 to 6 are

his brothers and sisters. After the death of his father, defendants started residing in the suit property and plaintiff started residing at New Delhi. As per plaintiff, he always remained owner in possession of his share being co-sharer in the suit property left by his father to the extent of his share. He had requested the defendants to get the suit property partitioned, however, they in connivance with each other, illegally tried to dispose of the joint property. On 08.08.2008, when plaintiff visited the property in dispute, he came to know that defendants were trying to dispose of the same without his consent. They also proclaimed that they were the absolute owners in possession of the entire property. They also proclaimed that they had got the title transferred in their names in the revenue record. Father of the plaintiff died intestate and no partition or family settlement had ever been taken place among the parties to the suit. The plaintiff was legally entitled to 1/7th share in the suit property by way of succession. The plaintiff had requested the defendants to amicably settle the matter, but they had flatly refused to do so. Hence, the suit.

Upon notice, defendant-respondents filed written statement taking preliminary objections with regard to maintainability of suit; locus standi; incorrect description of suit property and valuation of the suit for the purpose of court fee and jurisdiction. It was submitted that as per family settlement dated 08.08.1973, one shop situated in Bazar Bajianwala, Jalandhar, which was purchased by Harnama Singh vide registered sale deed dated 26.10.1967 in the name of the plaintiff, was given to him. It was also settled that plaintiff would not claim any share in the remaining movable and immovable properties left by Harnam Singh. Therefore, plaintiff (appellant) had no concern with the suit property. On 08.08.1973,

original owner Harnam Singh, executed a valid Will in his sound disposing mind, whereby he had bequeathed the house in dispute along with other property in favour of defendant No.1. The said Will was in the knowledge of the plaintiff. Family settlement and the Will in question were written on the same date, time and place by the same scribe. Defendant No.1 was in possession of the suit property as owner. Defendant No.1 had further transferred the suit property in favour of defendant No.2 vide registered transfer deed dated 28.08.2008. Thereafter, defendant No.2 had become exclusive owner of the same. Plaintiff and defendant Nos. 3 to 6 had no concern with the suit property. All other allegations levelled by the plaintiff in the plaint were denied and prayer for dismissal of the suit was made.

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

1. Whether the plaintiff is joint owner in possession of 1/7th share and defendants are 6/7th share in the double storey house No.EO.177-178 and plaintiff is entitled to declaration as prayed for? OPP
2. Whether the plaintiff is entitled to separate share by way of partition by metes and bounds? OPP
3. Whether the plaintiff is in possession of the sit property and is entitled to the relief of permanent injunction as prayed for? OPP
4. Whether the suit is properly valued for the purpose of court fee and jurisdiction? OPP
5. Whether the suit property has been correctly described and the correct site plan is attached with the plaint? OPP
6. Whether Sh. Harnam Singh is original owner of the suit property and executed a valid Will dated 08.08.1973 in favour of defendant No.1? OPD
7. Whether vide family settlement dated 08.08.1973, one shop situated in Bazar Bajianwala, Jalandhar was purchased vide

registered sale deed dated 26.10.1967 in the name of plaintiff?

OPD

8. Whether the defendant No.1 was in possession of the suit property as owner to the ouster of the plaintiff? OPD

9. Whether the plaintiff is estopped from filing the present suit by his own act and conduct? OPD

10. Whether the defendant No.1 has transferred the suit property in favour of defendant No.2 vide registered transfer deed dated 28.07.2008? OPD

11. Relief.

Trial Court, after going through the evidence led by the parties, dismissed the suit. Appeal against the said judgment and decree also met the same fate.

Heard.

Dispute in the present case is between real brothers and sisters with respect to the property, which was left by their father Harnam Singh. Case of defendant-respondents was that Harnam Singh, original owner of the property, had executed a Will dated 08.08.1973 in favour of Mayawanti-defendant No.1. After execution of the Will Ex.D4, a family settlement dated 08.08.1973 Ex.D3 was also executed. Later on, defendant No.1 executed a transfer deed dated 28.07.2008 Ex.D1 in favour of Rajinder Singh.

All the above said documents have been duly proved by the defendants by leading evidence i.e. Diwan Singh, attesting witness of the Will Ex.D3 (DW-3), Paramjit Singh Junior Assistant Sub Registrar Office (DW-1), Amarjit Singh, Advocate, who had scribed the transfer deed dated 28.07.2008 and Parminder Singh, one of the attesting witnesses of transfer deed. As per family settlement, a shop, which was purchased by Harnam

Singh in the name of Kuldeep Singh, had been given to the latter (appellant)

and in lieu of that, he had waived off his right over the remaining movable and immovable properties of his father (Harnam Singh). As per deposition of the witnesses, Harnam Singh was in sound disposing mind at the time of making the Will. Since, all the documents have been duly proved on record by leading cogent and convincing evidence, this Court is of the view that suit of plaintiff-appellant has been rightly dismissed by both the Courts below. No illegality, much less perversity, has been found in the impugned judgments, warranting interference by this Court. The evidence has been appreciated in the right perspective.

No substantial question of law arises for consideration.

Dismissed.

11.12.2017
ajp

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No