

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

RSA No. 5691 of 2017 (O&M)

Date of decision : 19.12.2017

Smt. Kailash Bhagat and anr. ...Appellants

versus

Ashok Kumar and others ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Shailender Jain, Sr. Advocate with
Mr. Satyander Singh, Advocate, for the appellants.

Mr. Puneet Jindal, Sr. Advocate with
Mr. Varun Grover, Advocate, for the respondent-caveators.

RITU BAHRI, J.

C.M. No 13053-54-CII-2017

For the reasons mentioned in the applications, delay of 02 days in filing and 78 days in re-filing of the appeal is hereby condoned.

The applications stand disposed of.

R.S.A. No. 5691-2017

This regular second appeal is directed against the concurrent findings of facts recorded by both the Courts below whereby the suit of the plaintiffs-respondents (herein after to be referred as 'the respondents') for possession, was decreed.

Brief facts of the case put forth by the respondents are that Gulzari Lal was the owner of double storey house No. 353-R Model Town Jalandhar measuring about 18 marlas which was transferred to Ashok Kumar-respondent No. 1 by the Government of India vide deed of conveyance executed on 16.10.1949. Respondent No. 1 and Ashok Kumar-defendant No. 7 are the sons of Gulzari Lal while defendant Nos. 5 and 6

are the two daughters of Gulzari Lal. Respondent No. 1 claimed that defendant No. 2 who is his brother-in-law retired from the Income Tax Department in May, 1995. He owned his own house No. 295, Guru Teg Bahadur Nagar, Jalandhar. Since, the said house was in occupation of tenant, so defendant No. 1 and 2 requested Gulzari Lal to give them his own house i.e the suit property to live in for the time being. Gulzari Lal gave the possession of the house to defendant Nos. 1 and 2, who at that time promised to vacate it as and when their own house was got vacated from the tenant. Further defendant No. 2 had agreed to pay Rs.5000/- per month as rent for the house in addition to house tax, electricity, water and other charges. Thereafter, defendant Nos. 1 and 2 refused to vacate the said house on the demand of his father Gulzari Lal. Believing defendant No. 2 to be tenant, Gulzari Lal had instituted an ejectment petition for getting the house vacated, which was dismissed vide order dated 31.07.2009 on the ground that there was no relationship of landlord and tenant between Gulzari Lal and defendant No. 2. The appeal against the said judgment was also dismissed on 06.01.2012.

During the pendency of the rent petition, defendant No. 1 instituted a suit for specific performance against Gulzari Lal, alleging that Gulzari Lal had executed an agreement to sell dated 18.06.1995 in her favour to sell the said house. Defendant No. 1 claimed that she is in possession of the suit property in part performance of the agreement. The suit was contested by Gulzari Lal and was dismissed on merits vide judgment and decree dated 01.12.2009, who held that plaintiff has failed to prove the alleged agreement. The appeal against the said judgment was also

dismissed vide judgment and decree dated 25.07.2012.

Plaintiff-respondent No. 1 on the other hand claimed that after the dismissal of the ejectment petition on 06.01.2012 and the suit for specific performance on 25.07.2012, the possession of defendant Nos. 1 and 2 over the suit property is illegal. They have no right to continue it possession, as plaintiff claimed that his father, who died on 17.11.2011 executed a registered will in his favour dated 03.09.1996

Both the Courts below had held that the suit property was self acquired property of Sh. Gulzari Lal and the plaintiff has claimed execution of the will by his father. Gulzari Lal being absolute owner of the property was competent to execute the will. Further Gulzari Lal had litigation with defendant Nos. 1 and 2 and thus it was quite natural for Gulzari Lal to execute a will in favour of the plaintiff, who was taking care of him. In this regard, plaintiff had examined attesting witness of the will i.e P.W.2 who deposed that at the time of execution of the will, Gulzari Lal was fit and he had executed it with his own free will and without any pressure. The will was also registered, as proved by P.W.1 Bhag Chand, Clerk in the office of Sub Registrar U.T. Chandigarh. In cross examination, P.W.2 further deposed that his father had executed will in respect of his share in Kothi No. 353-R, Model Town Jalandhar in the name of Rajesh Bhagat, his daughter's son. His father told him that M.R Bhagart and Rajesh Bhagat had got his signature on the will in connivance with Kailash Bhagat.

The suit property was further held to be not a HUF property and it was self acquired property of Gulzari Lal. The defendants had further failed to prove as to how and under what circumstances, they came into

possession the copy return of income for the assessment year 1992-93. This document merely does not prove that the existence of HUF. There is no evidence by defendants about the existence of any Joint Hindu Family nucleus or funds. The suit house was purchased in 1949 and constructed in 1953-54. It is not disputed that Gulzari Lal was in service in British Army since 1940-42 and this house was allotted to him for a consideration of Rs.,1400/- in 1949.

After going through the judgments passed by this Court below, this Court feels that the finding of facts recorded by the learned trial Court was rightly upheld by the Lower Appellate Court, as in the present case, the present-appellant had proved the will dated 03.09.1996, which was in his favour. This will was made in his favour by his father, as his father Gulzari Lal lived with him in his house at Chandigarh from May-June, 1995 till his death on 17.11.2011. The death certificate of Gulzari Lal was proved as Ex P10. The plaintiff served his father during his old age and illness. Defendant Nos. 1 and 2 failed to show any suspicious circumstance surrounding the execution of the will.

Accordingly, the concurrent findings of facts recorded by both the Courts below does not require any interference by this Court.

No substantial question of law arises for adjudication by this Court.

The appeal is dismissed.

19.12.2017

G Arora

(RITU BAHRI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No