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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-425-1992 (O&M)

Date of decision : 19.02.2018

Karamjit Singh

... Appellant(s)

Versus

Harjit Singh and another

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Amit Jain, Advocate
for the appellant(s).

Mr. P.S. Rana, Advocate
for the respondents.

AMIT RAWAL, J. (ORAL)

The appellant-defendant is aggrieved of the concurrent findings of fact, whereby the suit of the respondents-plaintiff for declaration to the effect that he is owner in exclusive possession of one house situated in *abadi* Circular Road, Kapurthala, comprising khewat No.136, Khatauni No.192, Khasra No.5918/4979/1-0 with consequential relief of permanent injunction restraining the defendants not to forcibly dispossesses the plaintiff out of house, has been decreed by both the Courts below.

It would be apt to give preface of the matter before adverting to the rival contention of learned counsel for the parties.

The respondents-plaintiff instituted the aforementioned suit on the ground that he was the owner and possession of the house described under the head note of the plaint in terms of the unregistered Will dated

06.10.1977. Ralla Ram, father of the plaintiff was the owner of the house. He died on 04.04.1984 and executed the aforementioned Will. As per Will, he had given one plot measuring 10 marlas to defendant No.1 and gave 10 marlas plot to his daughter Sharan Devi/defendant No.2. The remaining property was given to the plaintiff, thus, the defendants have no concern. When the defendants tried to forcibly dispossess, the suit aforementioned was filed. The defendants contested the suit on the ground that it was not maintainable and not properly valued. On merits, it was stated that the ownership of the plaintiff was denied by virtue of the Will dated 06.10.1977, but stated that he had become the owner in possession of the house by virtue of the Will dated 10.11.1981 and did not deny the 10 marlas' plot given by his father and he was in possession thereof. The parties were at variance and the trial Court framed the following issues:-

1. *Whether the plaintiff is the owner in possession of land in dispute as alleged in the plaint? OPP*
2. *Whether Ralla Ram executed any valid will in favour of the plaintiff? If so, its effect? OPP*
3. *Whether Ralla Ram executed any valid will in favour of the defendant on 11.10.81? If so, its effect? OPD.*
4. *Whether the plaintiff is entitled to the injunction prayed for? OPP.*
5. *Whether the suit is not maintainable in the present form? OPD*
6. *Whether the suit is properly valued for the purpose of court fee and jurisdiction? OPD*
7. *Whether the defendants have disobeyed the orders of the Court? If so, its effect? OPP*
8. *Relief.*

The trial Court on the basis of the preponderance of evidence

decreed the suit and the appeal preferred by the defendants before the lower Appellate Court also met with the same fate.

Mr. Amit Jain, learned counsel appearing on behalf of the appellant-defendant submits that the Courts below committed illegality and perversity in discarding the Will dated 10.11.1981 propounded by the defendant (Ex.DW-4/A) as there was a compliance of Section 68 of the Indian Evidence Act and Section 63(c) of the Indian Succession Act. Joginder Paul, scribe of the Will, proved the Will, much less, Ram Charan Dass, witness, but the Court below did not grant any reason and swayed away with the document (Ex.PZ), whereby a plot measuring 10 marals was given to Karamjit Singh, by his father Ralla Ram. During the pendency of the suit, the Local Commissioner was appointed, who gave his report dated 27.05.1985 that Room Nos.1 & 3 were in possession of appellant-defendant, yet the Court below without any evidence on the behalf of the respondents-plaintiff having dispossessed them, ordered for restoration of the possession, thus, there is illegality and perversity.

On the contrary, Mr. P.S. Rana, learned counsel appearing on behalf of the respondents-plaintiff submits that Joginder Paul could not stand the wrath of cross-examination with regard to the scribe of the Will and Ram Charan Dass did not know that as to when Ralla Ram signed the Will and it is, in this backdrop of the matter, the Courts below discarded The Will. The plaintiff categorically in a deposition made in October 1985, opposed the report of the Local Commissioner by stating that the aforementioned area, which was alleged to be in possession of the plaintiff, was forcibly taken by the appellant-defendant, even a suggestion was also put to the defendant when he appeared in cross-examination. The appellant-

defendant was separately living in the house measuring 10 marlas i.e. in Jalandhar, with his family having a voter-card and other documents. Had it been so, nothing prevented the defendant to belie the statements of the plaintiff by placing on record the certain documents, thus, urges this Court for upholding the judgments and decrees, under challenge as there is no illegality and perversity, much less, no substantial question of law arises for determination.

I have heard the learned counsel for the parties and appraised the paper book and record of the Courts below and am of the view that there is no force and merit in the submissions of Mr. Jain, for, no doubt the report of the Local Commissioner dated 27.05.1985 indicated that Room Nos.1 and 3 were in possession of the appellant-defendant and another rooms with the tenants, but the fact of the matter is that the respondents-plaintiff categorically in a deposition made in October 1985 and in examination-in-chief by opposing the report of local Commissioner stated that the defendant had attempted to take forcible possession. A suggestion was also put to the defendant, but it was denied. Nothing prevented the appellant-defendant to discharge the onus by leading evidence to rebut the aforementioned statement by examining the neighbors or some other proof to establish the possession, thus, rightly so, the Courts below had granted the injunction by holding that the respondents-plaintiff is the owner.

As regarding the Will dated 10.11.1981, Joginder Paul did not support the cross-examination as he feigned ignorance about the particulars of the Ralla Ram. Ram Charan Dass, also could not divulge anything contrary in cross-examination as he stated that other witness did not come in his presence nor he did know what was written in the Will, in essence, whether

the contents of the Will was read over to the testator or not. Ex.PZ, a document, shows that Karamjit Singh had been given a plot measuring 10 marlas by his father, which has not been denied in the written statement. In my view, the Will dated 06.10.1977 distributed equally among the siblings i.e. two brothers and sister, which was in equity and law and rightly so, Will dated 10.11.1981 (DW-4/A) has been discarded.

Keeping in view the aforementioned facts, I do not find any illegality and perversity in the judgments and decrees as the same are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination and accordingly, the regular second appeal is dismissed.

19.02.2018

Yogesh Sharma

(AMIT RAWAL)

JUDGE

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Whether speaking/reasoned

Yes/ No

✓

Whether Reportable

Yes/ No