

RSA No.160 of 1997 (O & M) &
RSA No.2845 of 1996 (O & M)

-1-

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

503

RSA No.160 of 1997 (O & M)
Date of Decision:09.03.2018

Tej Ram

...Appellant

Versus

Birma Devi and others

...Respondents

RSA No.2845 of 1996 (O & M)
Date of Decision:09.03.2018

Tej Ram

...Appellant

Versus

Parkash (deceased) through LRs

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rahul Sharma, Advocate
for the appellant.

Mr. Lokesh Sinhal, Advocate
for the respondents.

ANIL KSHETARPAL, J.(Oral)

Plaintiff has filed two appeals i.e. RSA No.160 of 1997 and RSA No.2845 of 1996 arising from the same suit. Two Regular Second Appeals were filed because two appeals were preferred before the learned First Appellate Court, one by the plaintiff and second by the defendants. Learned First Appellate Court has allowed the appeal filed by the defendants, whereas appeal filed by the plaintiff has been dismissed.

It is not in dispute that originally property was owned by one Kesri, who died on 15.11.1982. Plaintiff claims property on the basis of a

basis of a lease deed dated 14.07.1982, which is registered.

Learned trial Court after appreciating the evidence available on the file, upheld the lease deed and the Will-testamentary document. Learned trial Court held that in a previous suit filed between the same parties, the Will was held to be genuine.

Plaintiff and the defendants, both filed first appeals. Learned First Appellate Court upheld the lease in favour of the defendants but reversed the finding of learned trial Court with regard to validity of the Will on the ground that in this case attesting witnesses have not been examined and in the previous litigation only validity of the succession certificate was involved, which was dismissed on the ground that the defendant in the present suit has no locus standi.

In the considered opinion of this Court, following substantial questions of law arise:-

“(i) Whether the judgment passed by the learned First Appellate Court with respect to the Will is result of misreading of the judgment passed by the learned trial Court while submitting report dated 24.09.1990?”

“(ii) Whether learned First Appellate Court has correctly held that the suit filed by the plaintiff for declaration was not maintainable because he did not seek further relief of possession?”

Learned First Appellate Court has overlooked that in the previous litigation against the judgment of the learned trial Court dated

hearing the appeal directed the learned trial Court to submit a report on the validity of the Will. The learned trial Court after examining the evidence led by the parties, returned a finding that the Will executed by Kesri in favour of the plaintiff is genuine. Although, the detailed judgment passed by the learned First Appellate Court is not on record, however, the report which was submitted by the learned trial Court is on record. Still further, a regular second appeal filed by the defendants was dismissed by this Court. A copy of order is on record. Once in the previous litigation between the same parties, the Will had been held to be genuine and the learned First Appellate Court overlooked the report submitted by the learned trial Court in the Civil Suit No.620 of 1985, the finding of the learned First Appellate Court are clearly result of non-reading of the evidence. Hence, question No.1 is answered in favour of the appellant.

With regard to the second question, learned First Appellate Court has dismissed the suit filed by the plaintiff on the ground that further consequential relief of possession has not been prayed for. The suit has been dismissed in view of the proviso to Section 34 of the Specific Relief Act.

In the considered opinion of this Court, such finding is also erroneous. Section 34 provides that if a plaintiff is able to seek further relief than a mere declaration of title and he omits to do so then the suit is liable to be dismissed.

In the present case, the plaintiff was not entitled to any further relief. Plaintiff could not file a suit for possession as there was a registered lease deed in favour of the defendants. Hence, the view of the learned First Appellate Court on this aspect is clearly wrong. Hence, question No.2 is

also answered in favour of the appellant.

Although learned counsel for the appellant has very seriously pressed that the finding of both the Courts below on lease deed is also incorrect. However, the lease deed executed by late Sh. Kesri, who was the owner, has been proved on the file. The finding arrived at by the Courts below is on the basis of appreciation of evidence available on the file. There is no scope for interference by this Court. The finding arrived at by the Courts below by upholding the lease deed is not shown to be either perverse or result of misreading of any substantive error.

In view thereof, both the appeals are partly allowed. The finding of the learned First Appellate Court with respect to the Will and maintainability of the suit under Section 34 of the Specific Relief Act are set aside. However, the findings of the Courts below with regard to genuineness of the lease deed is upheld. Hence, the judgment passed by the learned trial Court is restored.

09.03.2018
sheetal

(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No