

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

RSA No.1234 of 2016 (O&M)

Date of decision : 31.07.2018

Veera Kumari

...Appellant

Versus

Natho Devi and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Neeraj Gupta, Advocate for the appellant.

Mr. Manuj Nagrath, Advocate for respondent Nos.2 and 3.

ANIL KSHETARPAL, J. (ORAL)

CM No.3488-C of 2016

For the reasons stated in the application, which is duly supported by an affidavit, delay of 174 days in refiling the present appeal is condoned.

Application is allowed.

Main Case

Defendant No.1-appellant is in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below while decreeing the suit for declaration claiming that the testament dated 23.10.2003 allegedly executed by Late Smt. Omkar Devi with regard to a piece of land measuring 250 square yards in plot No.177-B is illegal with a consequential relief of permanent injunction.

Both the Courts have found that originally property was allotted to Late Sh. Mool Raj Chopra in the year 1948. Before Mool Raj Chopra could pay all the installments, he died on 21.08.1956. His widow Omkar Devi got conveyance deed executed exclusive in her name ignoring the claim of other class-I heirs namely five daughters. Thereafter, Omkar Devi bequeathed a piece of land measuring 250 square yards in plot No.177-B in favour of defendant-appellant on 23.10.2003. It may be significant to note here that Mool Raj Chopra had purchased plots No.177-A and 177-B each measuring 420 square yards in a public auction. Omkar Devi had sold plot No.177-A vide sale deed dated 04.10.1979. It may be significant to note that the aforesaid sale deed has not been challenged.

The vendees who had purchased the property have not been impleaded as parties. It is further not in dispute that the plaintiffs earlier also filed a suit for partition of the property, wherein the defendant-appellant had setup the testament dated 23.10.2003. In the aforesaid suit, the decree for partition was passed and it was held that the Will-testament setup by Veera Kumari is not proved on file. First appeal as well as second appeal filed against the aforesaid judgment have been dismissed.

Learned counsel for the appellant has fairly produced the copy of judgment dated 02.11.2011 while deciding RSA No.4293 of 2011 upholding the finding that the Will-testament is not proved.

This Court has heard the learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below.

Learned counsel for the appellant has submitted that the suit

filed by the plaintiff was barred by limitation. He submitted that a conveyance deed was executed in favour of Omkar Devi which has been challenged after more than 12 years. Hence, the suit is barred by limitation.

On the other hand, learned counsel for the respondent has pointed out that the plaintiff had only filed a suit for declaration challenging the validity of testament dated 23.10.2003. It was further pleaded that originally property was purchased by Mool Raj Chopra and, therefore, conveyance deed executed in favour of Omkar Devi would not cloath the defendant with any exclusive right, title or interest in the property.

This Court has examined the arguments, however, finds no substance in the arguments of the learned counsel for the appellant.

Once, the testament dated 23.10.2003 has already been held to be not proved and finding to that effect has become final in the previous suit was inter parties, now the only thing which remains to be examined is whether the suit is within the limitation or not. An owner who has succeeded to the property by way of inheritance is entitled to claim a declaration that he is owner on the basis of the natural succession. In the present case, the plaintiff is claiming the property on the basis of natural succession.

Both the Courts have concurrently found that originally property was purchased by Mool Raj Chopra. In any case, even in the absence of any Will-testament executed by Omkar Devi, still the property would devolve upon all his natural heirs including plaintiff and the defendants.

Learned counsel for the appellant, however, pointed out that

declaration could not be granted by the Court with regard to the property represented by plot No.177-A because the same was sold on 04.10.1979 and the aforesaid sale deed has not been challenged.

Learned counsel for the respondent-plaintiff has also drawn the attention of the Court to para 13 of the trial Court wherein the plaintiffs have made a statement that they are not aware of the disposal of the remaining portion of the property and they reserve their right to take appropriate action as and when they come to know of the same. In such situation, it cannot be said that the decree passed by the Court is also covering the property i.e. plot No.177-A.

In such circumstances, this Court does not find any good ground to interfere with the concurrent findings of fact arrived at by both the Courts below.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

It is clarified that this judgment would not operate qua property No.177-A.

31.07.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No