

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

RSA No.1296 of 2016 (O&M)

Date of decision:21.05.2018

Ajit Kumar

... Appellant

Vs.

Vijay Kumar and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

**Present:- Mr. Arun Jain, Senior Advocate with
Mr. Varun Sharma, Advocate
for the appellant.**

AMIT RAWAL J. (Oral)

Appellant-defendant No.1 is aggrieved of the concurrent findings of facts and law, whereby, suit of plaintiff-respondent No.1 has partly been decreed to the effect that plaintiff was declared as a co-sharer in joint possession to the extent of his share in the property as fully detailed in Head Note A of the plaint and further as exclusive title holder of perpetual leasehold rights qua the property as described in Head Note B of the plaint. Relief of permanent injunction claimed by the plaintiff qua the property comprised in Head Note A of the plaint was declined, for, being owner in joint possession over the property in dispute alongwith defendants.

The suit at the instance of the plaintiff/respondent No.1 was filed claiming co-ownership in joint possession over the property in dispute as referred to above (hereinafter called “suit property”) on the premise that

Ram Lal son of Sunder Dass, father of the plaintiff and defendants No.1, 2 and 4 and husband of defendant No.3 was owner of the property and died on 08.08.2000. During his life time, executed a registered Will dated 13.05.1998 in favour of plaintiff, defendants No.1 and 4, whereby, the suit property mentioned in Head Note A of the plaint were given jointly to the plaintiff and defendants and property mentioned in Head Note B of the plaint was given to the plaintiff exclusively.

The suit was contested by defendant No.1-Ajit Kumar. It was stated that it was joint Hindu property and there was dispute only with regard to the property described in Head Note B of the plaint between plaintiff and defendant No.1 situated at New Delhi. It was denied that Ram Lal was not exclusive owner in possession of the property mentioned at Head Note B of the plaint, rather the same was Hindu Undivided Family Property at the hands of Ram Lal, during his life time effected an oral settlement to the extent of 1/6th share each. Defendants No.2 to 4 also filed separate written statement. The factum of Will was not denied, for, Ram Lal bequeathed the property as mentioned in the Head Note A.

Since both the parties were at variance, the trial Court framed the issues. The plaintiff in support of the averment in the plaint examined four witnesses and brought on record Ex.P1 to Ex.P19, whereas, defendants examined five witnesses and brought on record Ex.D1 to Ex.D17.

In rebuttal, Resham Singh, Senior Clerk, Income Tax Department was examined as DW3, who deposed to the effect that he had brought income tax assessment record of Vijay Kumar and his brother Ajit

Kumar and his father Ram Lal for the year 2000-01 but he has not brought the record prior to that period since the department had destroyed the record being old.

On the preponderance of evidence, the trial Court decreed the suit as indicated above and the appeal preferred by appellant-defendant No.1 before the Lower Appellate Court was dismissed by affirming the findings of trial Court.

Mr. Arun Jain, learned Senior counsel assisted by Mr. Varun Sharma, Advocate appearing on behalf of the appellant-defendant No.1 submits that Will dated 13.05.1988 was required to be ignored, for, Ram Lal during his life time had effected a family partition and for that an affidavit dated 10.08.1989 has been proved through the testimony of DW3 (wrongly typed as DW2), as photocopy of the same was brought on record. In this regard, an application for secondary evidence was moved and the same was allowed. The loss and existence of the aforementioned document had been proved to the hilt. Even the stamp vendor who had sold the affidavit, had also been examined and lawyer drafted the same but the aforementioned evidence has not been appreciated. The dispute in the present appeal is only with regard to the property mentioned at Head Note B of the plaint. The Court at Mukerian did not have the territorial jurisdiction to decide the controversy and entertain the same with respect to the property situated at New Delhi. Right from the date of the execution of the affidavit, the appellant was reflected as owner to the extent of 1/6th share each in respect of Delhi property. All these facts resulted into illegality and perversity,

therefore, there is an abdication.

I have heard the learned counsel for the appellant-defendant No.1, appraised the judgments and decrees of the Courts below and of the view that there is no force and merit in the submissions of Mr. Jain, for, back side of the affidavit had not been proved on record as to whether it was sold by the same very stamp vendor. Similar would be the statement of Advocate.

In my view, the appellant has not been able to discharge the onus for proving the basic ingredients of loss and existence which are required for the purpose of leading secondary evidence. Per contra, plaintiff-respondent No.1 has been able to prove the registered Will through registration clerk and attesting witness. Both the attesting witnesses have remained coherent and consistent despite extensive cross-examination. All these factors weighed in the mind of the Courts below and found that the affidavit had not been proved as the Will prevailed. The arguments of Mr. Jain do not warrant any interference.

Before parting with the judgment, I am of the view that in a suit aforementioned claiming declaration qua ownership and possession of the property mentioned at Head Note A and exclusive possession of suit property described at Head Note B, it was kind of claim with regard to aforementioned property, for, the property situated at different Districts or States, either of the Court can entertain the dispute, therefore, argument with regard to Mukerian Court did not have the territorial jurisdiction, is not tenable and the same is hereby rejected.

As an upshot of my findings, I do not find any illegality and perversity in the judgments and decrees of the Courts below which are based upon the appreciation of oral and documentary evidence, much no substantial question of law arises for adjudication of the present appeal.

No other argument has been raised.

Accordingly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

May 21, 2018
savita

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