

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

RSA No.1410 of 2016(O&M)
Date of decision: 22.05.2018

Som Nath and another

... Appellants

Versus

Sham Lal and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Onkar Rai, Advocate for the appellants.

ARUN PALLI, J. (Oral)

The suit filed by the appellants/plaintiffs was dismissed by the trial Court, vide judgment and decree dated 25.11.2013. As even the appeal preferred against the said decree failed, and was dismissed on 04.05.2015, they are in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

The plaintiffs prayed for a decree for possession of the suit property i.e. a residential house bearing Municipal Council No.B-1/337-338, situated at Mohalla Flywala, Nurmahal, Tehsil Phillaur, District Jalandhar, being owners in equal shares. Briefly, the case of the plaintiffs has been that Rulia Ram son of Batalia Ram happened to be the owner in possession of the house in question, which was assessable to house tax and was entered in the assessment register of Municipal Council, Nurmahal. An electric connection too was installed in the suit property in the name of Rulia Ram.

Rulia Ram had a brother, namely, Dass Ram, who died on 05.11.1969. Rulia

Ram, who was issueless, also passed away on 11.02.1997 and was succeeded to by his real sister, namely, Malavi. Resultantly, she became the exclusive owner of the suit property. The plaintiffs happened to be the sons of Madan Lal son of Dass Ram (brother of Rulia Ram). Rulia Ram was alleged to have been residing with the plaintiffs and their father Madan Lal, therefore, the plaintiffs too were in possession of the suit property. For, Malavi was married at Tanda, the actual possession of the house in question remained with the plaintiffs and their father Madan Lal post death of Rulia Ram. Malavi had also passed away on 20.04.2003, and in lieu of the services rendered by the plaintiffs, she vide Will dated 09.04.2003, bequeathed the suit property in favour of the plaintiffs. But as the plaintiffs and their father owing to their respective employments started residing at Phillaur temporarily, defendant No.1, whose residential house abuts the suit property, illegally opened the locks of the house in question and occupied the same in the year 2008. Thus, the suit.

In the written statement filed on behalf of defendant No.1, it was pleaded that he happened to be the exclusive owner in possession of the suit property. Rulia Ram was an old man, and being alone, there was no one to look after him in his old age and as such defendant No.1 permitted Rulia Ram to live with him as licensee without any right in the suit property.

On a consideration of the matter in issue, and the evidence on record, both the Courts concurrently concluded that in order to prove the title of late Rulia Ram qua the suit property, the plaintiffs had relied upon an assessment register Ex.P3, but as the entries in the said register are recorded only for the purpose of house tax, they were hardly of any consequence to determine the ownership of late Rulia Ram. Likewise, apart from the

assessment register and electricity bills, no cogent evidence was led to prove the ownership of Rulia Ram. Rather, plaintiff Som Nath (PW2) conceded in his cross-examination that there was no title deed in the name of Rulia Ram. Further, the ownership of the suit property was never transferred in the name of Malavi post death of Rulia Ram in the assessment register or in any other document. He also admitted that he had no proof that he had ever occupied or remained in possession of the suit property. Therefore, neither Rulia Ram nor Malavi Devi could be held to be the owners of the house in question. As regards the Will (Ex.P1) alleged to have been executed by Malavi in favour of the plaintiffs, it was observed that Will did not bear the thumb impression of the testator on its second page. Further, thumb impression appended at endorsement did not bear the specification if those were of left/right thumb impressions. Plaintiffs had examined one of the attesting witnesses of the Will, namely, Karam Chand (PW1), who too conceded in his cross-examination that he did not remember the day when the Will (Ex.P1) was scribed. He also admitted that Will did not bear the thumb impression of testator Malavi. He also deposed that endorsement upon Ex.P1 did not bear his signatures, but only of Tarlok Singh and Gurmukh Singh. Significantly, Karam Chand (PW1) also happened to be defendant No.3 in the suit, but no permission was ever sought to examine him as plaintiffs' witness. Concededly, Karam Chand (PW1) was not present at the time of presentation and registration of the Will and only Tarlok Singh, the other attesting witness, was present on both the occasions. However, Tarlok Singh was never examined. Concededly, defendant No.1 was in possession of the suit property, who alleged to have encroached thereupon by breaking/opening the locks, but even the said plea remained unsubstantiated

for lack of any evidence. That being so, the only and the inevitable conclusion that could be reached; the suit filed by the plaintiffs was wholly devoid of merit.

On being pointedly asked, learned counsel for the appellants could not refer to anything on record to show if the conclusions arrived at by both the Courts were either contrary to the record or suffered from any material illegality. Thus, no question of law, much less any substantial question of law, arises for consideration. The appeal being devoid of merit is accordingly dismissed.

(Arun Palli)
Judge

22.05.2018
Rajan

Whether speaking / reasoned:	YES
Whether Reportable:	NO