

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA No.4498 of 2013 (O&M)
Date of decision: 28.11.2018

Vijay Kumar

..... Appellant

Versus

Union of India and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Kulwant Singh, Advocate
for the appellant.

Mr. Sudhir Sharma, Advocate
for respondent No.3.

ANIL KSHETARPAL, J. (ORAL)

Plaintiff-appellant is in the regular second appeal against the concurrent finding of fact arrived at by the Courts below dismissing his suit for injunction directing the defendant to enter the property in dispute in his name on the basis of Will executed by his mother.

The plaintiff-appellant has filed an application (CM-17675-C-2018) under Order 23 Rule 1 CPC for permission to withdraw the suit as well as appeal with permission to file fresh suit on the same cause of action.

Learned counsel has pointed out that the suit filed by the plaintiff has been held to be not maintainable and therefore, he may be permitted to withdraw the suit. Order 21 Rule1(3) of the Code of Civil Procedure 1908, deals with the aforesaid situation. It has been provided that if the Court is satisfied that a suit must fail by a reason of some formal

defect or there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter of a suit, then the Court may permit the plaintiff to withdraw the suit with liberty to institute a fresh suit in respect of subject matter of such suit. In the present case, the suit has not been dismissed only on account of any formal defect. Both the Courts have discussed the evidence led and found that the plaintiff failed to prove his case. The plaintiff had based his case on the basis of Will executed by his mother. The original Will has not been produced. Only a photocopy of Will attested by notary public has been produced. Still further, other heirs of Smt. Parvati Devi had not been impleaded as party, although, a widowed daughter-in-law became party at the stage of appeal. Smt. Parvati Devi who was having five sons and a daughter but the plaintiff i.e. the son, did not implead other sons and daughter as party to the suit.

Both the Courts have also examined that Sh. Dhanpat Rai who was original owner had only given life interest by way of Will dated 12.10.1970 in favour of his wife and therefore, Parvati Devi had no right to execute the Will. Learned First Appellate Court has also examined the case with reference to Section 14 of the Hindu Succession Act and found no substance therein.

In these circumstances, particularly when two Courts have already decided the suit not only on the maintainability but also on merits, it would not be appropriate for this Court to allow this application. Hence, the application is dismissed. Learned counsels have been heard on the main appeal also.

The facts have already been noticed in detail by this Court while discussing merits of the application.

For the reasons stated above, this Court does not find any good ground to interfere with the concurrent finding of fact arrived at by the Courts below.

Appeal is dismissed.

28.11.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No