

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA-1509-2015 (O&M)

Date of Decision: 17.5.2018

Lala Wanti

....Appellant.

Versus

Smt. Raj Rani and another

...Respondents.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL,
ACTING CHIEF JUSTICE.**

PRESENT: Mr. Ankit Aggarwal, Advocate for the appellant.

AJAY KUMAR MITTAL, ACJ.

1. Delay of 295 days in refiling the appeal is condoned.

2. Having remained unsuccessful before the Courts below, the appellant-plaintiff has approached this Court by way of instant Regular Second Appeal against the judgment and decree dated 30.9.2013 passed by the District Judge, Karnal, affirming that of the Civil Judge (Junior Division), Karnal, whereby the suit of the plaintiff for declaration with consequential relief of permanent injunction, was dismissed.

2. A few facts necessary for the disposal of the present appeal as narrated therein may be noticed. Shri Tharu Ram, father of the plaintiff and defendant No.1 was owner in possession of House No.784, Taraori, Teshil Nilokheri, District Karnal on the basis of civil court decree dated 14.9.1982.

He had purchased two shops bearing Nos. 781 and 782 from Rehabilitation

Department and after purchase thereto, he converted shop No.781 into two separate shops. Said Shri Tharu Ram had died on 30.4.1983. He executed a registered Will dated 22.10.1982 qua house No.784 in favour of defendant No.1 only. Therefore, defendant No.1 had become exclusive owner of house in question after the death of Shri Tharu Ram. Since there was no Will with regard to the shops in question, therefore, the plaintiff and defendant No.1 became owner in possession of the said shops in equal shares being the only legal heirs of Shri Tharu Ram. The shops were on rent with different tenants and defendant No.1 was collecting the rent as she was residing at Taraori and the share of rent of the plaintiff was being given to the plaintiff. The plaintiff requested defendant No.1 to give her share of rent in the suit property, but she flatly refused to accede her request which gave rise to the suit for declaration with consequential relief of permanent injunction restraining the defendants from alienating the suit property in any manner. The said suit was contested by the defendants by filing a joint written statement. Besides raising various preliminary objections, it was pleaded therein that Shri Tharu Ram father of the plaintiff and defendant No.1 was owner in possession to the extent of 1/2 share of the suit property. It was further pleaded that the properties bearing Nos. 781 and 782 purchased by said Shri Tharu Ram from the Rehabilitation Department were in the shape of two rooms adjoining to House No.784 and they were not in the form of shops. Said Shri Tharu Ram used to live with defendant No.1 and she had looked after during his life time. Shri Tharu Ram executed a registered Will dated 22.10.1982 in favour of the defendant No.1 and on the basis thereof, she became the absolute owner of the property in question including the shops. The other averments made in the plaint were denied and a prayer for

dismissal of the suit was made. The plaintiff filed replication controverting the averments made in the written statement and re-asserting that of the averments made in the plaint.

3. From the pleadings of the parties, the trial Court framed the following issues:-

1. Whether the plaintiff is entitled to declaration as prayed for? OPP
2. If issue No.1 is proved, whether the plaintiff is entitled for relief of permanent injunction as prayed for? OPP
3. Whether the suit of the plaintiff is not maintainable in its present form? OPD
4. Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD
5. Whether the suit of the plaintiff is time barred? OPD
6. Whether the plaintiff is estopped from filing the present suit by her own act and conduct? OPD
7. Relief.

4. On appreciation of the oral as well as documentary evidence led by the parties, the trial Court came to the conclusion that the plaintiff was not entitled to half share in the suit property and that the judgment and decree dated 24.5.1993 passed in civil suit No.409 of 1993 was legal, valid and binding upon the rights of the plaintiff. Accordingly, the trial Court vide judgment and decree dated 1.8.2011 dismissed the suit of the plaintiff.

Feeling aggrieved, the plaintiffs filed an appeal and the lower appellate

Court vide judgment and decree dated 30.9.2013 dismissed the appeal by affirming the findings recorded by the trial court. The lower appellate court had held that all the properties were the integral part of property No.784 which was owned by defendant No.1 on the basis of the registered Will executed in her favour by her father. Further, the defendant No.1 being the owner of the property in question, had the right to transfer the same in favour of her son defendant No.2. Hence, the present appeal claiming the following substantial questions of law:-

- “I. Whether the marked document i.e. Will dated 22.10.1982 has to be taken into consideration, as same has not been duly proved by examining the marginal witness?
- II. Whether the suit filed by the appellant is not liable to be decreed as defendants have not proved the execution of the Will in question?
- III. Whether the courts below have not totally ignored the recital of the Will wherein it was stated that defendant/respondent No.1 is entitled only to the residential house?
- IV. Whether the recital regarding the shop in question has not been totally ignored by the courts below while relying upon the marked document i.e. the Will in question?
- V. Whether the impugned judgments and decrees are patently illegal, ultra-vires, void and without jurisdiction and are liable to be set aside?

VI. Whether grave and manifest injustice has been caused to the appellant in the matter?

5. I have heard learned counsel for the appellant and have gone through the judgments and decrees with his assistance.

6. Learned counsel for the appellant has made an attempt to persuade this Court to re-appreciate the evidence led by the parties before the trial Court to differ with the opinion of the courts below which is not permissible in view of the provisions of Section 100 of the Code of Civil Procedure. The Courts below on appreciation of oral as well as documentary evidence, *inter alia*, had recorded a concurrent finding of fact that alleged shops bearing No.781 and 782 were the integral part of property no.784 which was bequeathed to defendant no.1 by her father Sh. Tharu Ram vide registered Will dated 22.10.1982. Further, since the execution of registered Will dated 22.10.1982 was admitted by the plaintiff, therefore, in view of Section 58 of the Indian Evidence Act, 1872, the same was not required to be proved. According to both the Courts below, the father of the plaintiff and defendant No.1 had bequeathed the house in question as well as the shops in favour of defendant No.1 vide the said Will and thus, defendant No.1 was competent to transfer the ownership rights of the suit property in favour of defendant No.2 on the basis of the judgment and decree dated 24.5.1993. Still further, it was recorded that the plaintiff was not entitled to half share in the suit property and the decree dated 24.5.1993 was legal, valid and binding upon the rights of the plaintiff. No misreading of evidence on record by the courts below had been shown by the learned counsel warranting interference by this Court in the regular second appeal.

7. No question of law, much less a substantial question of law

arises in this appeal for consideration of this Court.

8. In view of the above, there is no merit in this appeal and the same is hereby dismissed. No costs.

9. CM-4207-C-2015 has been filed under Section 5 of the Limitation Act, 1963 for condonation of delay of 25 days in filing the appeal. Since, the appeal has been dismissed on merits, therefore, no further orders are required to be passed in the present application and the same is disposed of as such.

May 17, 2018
gbs

(AJAY KUMAR MITTAL)
ACTING CHIEF JUSTICE

Speaking/Reasoned

Yes

Whether Reportable

Yes