

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

1. **RSA No. 1535 of 2015 (O & M)**
Date of Decision:-07.02.2018

Sandeep Kumar and another

...Appellants

Versus

Kamlesh and another

...Respondents

2. **RSA No. 1534 of 2015 (O & M)**

Sandeep Kumar and another

...Appellants

Versus

Kamlesh and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Babbar Bhan, Advocate
for the appellants.

Mr. K.S. Malik, Advocate
for the respondents.

AMIT RAWAL J.(Oral)

This order of mine shall dispose of two appeals i.e. RSA No. 1534 of 2015 and RSA No. 1535 of 2015 filed by the plaintiff and defendant in counter claim whereby the trial Court partly allowed the suit for injunction filed by the appellant-plaintiff qua forcible dispossession but

in the counter claim set aside the mutation No.14468 dated 28.3.2009 sanctioned in favour of the appellant on the basis of the Will bearing No.919-3 dated 30.1.2009 and held that counter claimant shall be entitled to take possession in accordance with law. However, the lower Appellate Court dismissed the appeal of the plaintiff viz a viz non granting of status of ownership on the basis of the Will and allowed the counter claim directing the plaintiff-defendant in the counter claim to hand over the possession within a period of three months.

Mr. Babbar Bhan, Advocate learned counsel appearing on behalf of the appellant submitted that in the suit filed by the plaintiff an injunction was sought on the basis of the Will, *ibid*, executed by the grandmother-Kitabo Devi as the plaintiff was in possession of the suit property claiming the ownership rights. The defendant set up a counter claim by challenging the Will and mutation, as noticed above, on the ground that a subsequent Will dated 22.2.2009 was executed and therefore the previous Will dated 30.1.2009 would not accrue any right to the plaintiff claiming title in the property.

The aforementioned judgments and decrees were challenged by both the parties viz a viz non-granting of the relief by the appellant-plaintiff with regard to the ownership and by the defendants/counter-claimants granting injunction in favour of the plaintiff. The appeal filed by the plaintiff was dismissed and the counter claim was allowed but in para 35, a period of three months time was granted to hand over the possession, therefore, there is apprehension that the counter claimants will execute the

decree with regard to handing over the possession and thus urges this Court for setting aside the findings rendered in para 35 of the judgment of the lower Appellate Court.

Mr. K.S.Malik, Advocate learned counsel appearing on behalf of the counter claimants-defendants submits that the concurrent findings of facts cannot be interfered with and there is no decree with regard to the possession. The liberty granted by the trial Court is perfectly legal and justified. Any other finding rendered would not be part of the decree. It is totally misinterpretation/misapprehension of the plaintiff.

I have heard learned counsel for the parties and appraised the paper book.

The decree passed by the trial Court reads as under :-

“It is ordered that the suit of the plaintiffs and counter claim of the defendants are hereby decreed. Consequently, mutation bearing No.14468 dated 28.3.2009 sanctioned in favour of the plaintiffs on the basis of Will bearing document No.919/3 dated 30.1.2009, is illegal, null and void and the same is hereby set aside. A decree for permanent injunction is hereby passed in favour of the plaintiffs and the defendants are restrained from interfering into their possession over the suit property but since impugned mutation No.14468 Ex.D6 has been set aside by this Court, hence, the defendants are at liberty to take possession of the suit property in accordance with law and the revenue authorities are directed to sanction a fresh mutation of the suit property on the basis of last Will dated 20.2.2009, executed by Smt. Kitabo Devi.

The parties are left to bear their own costs.”

And the decree passed by the lower Appellate Court read as under :-

“CLAIM FOR :-A decree for permanent injunction restraining the defendants from interfering into the peaceful possession and ownership of the plaintiffs on any manner may kindly be passed in favour of the plaintiffs and against the defendants with costs.

Counter Claim : The suit of the plaintiffs may kindly be dismissed and counter claim filed by defendants may be decreed with costs.

MEMORANDUM OF APPEAL

Kamlesh-----Appellant

Sandeep-----Respondent

The above named appellant filed appeal to the Court at Rohtak from the decree of Sh. Ashwani Kumar, Civil Judge (Senior Division), Rohtak dated 24.9.2014 for the reasons vide grounds of appeal.

This appeal coming on for hearing on 26.2.2015 before me (Krishan Kant, Addl. District Judge, Rohtak) in the presence of Shri Joshi Ahlawat, counsel for the appellants and Sh. Jaipal Sharma, counsel for respondents.

It is ordered that the appeal of the plaintiff is hereby dismissed and the counter-claim of the defendants is hereby accepted and, so, their appeal is hereby accepted.”

The decree of the lower Appellate Court only envisages the dismissal of the appeal filed by the plaintiffs and allowing of the counter claim but in paragraph 35, there is passing reference whereby the lower

Appellate Court directed the plaintiffs to hand over the possession of the suit property to the defendants within three months. For the sake of brevity, the findings given in para 35 by the lower Appellate Court read as under :-

“35. Further, in the present case the plaintiffs Amit and Sandeep are claiming the relief of permanent injunction against the defendants Mukesh and Kamlesh to the effect that they be restrained from interfering in the peaceful possession over the property in question. As per my above said recorded reason and discussion, it has come on the record that plaintiff become the owners by virtue of mutation No.14468 Ex.D6 which is also set aside by Ld. Lower Court and also affirmed by this Court in appeal. So, the plaintiffs are directed to hand over the possession of the suit property to the defendants within three months from the date of order. As such, there is illegality or infirmity in the findings given by the learned Lower Court on issue Nos.1,2,3,9,10 and 11 qua with the granting of relief of permanent injunction in favour of the plaintiff and restraining the defendants, as the Will dated 20.2.2009 was held to be legal, valid, enforceable upon the parties and the will dated 30.1.2009 was held to be illegal, null and void and the same was set aside by the learned lower Court and finding qua the relief of permanent injunction decreed in favour of plaintiff is hereby set aside in appeal as the same are perverse. As such, the appeal of the plaintiff is hereby dismissed and the counter claim of the defendants is hereby accepted and, so, their appeal is hereby accepted. Decree-sheet be prepared accordingly. Lower Court Record be sent back alongwith the copy of order of this court. Appeal file be consigned to the record room.”

I am of the view that it is a decree which is to be executed and not the judgment. The plaintiffs would be at liberty to take all possible objections in case the judgment of the lower Appellate Court is ever sought to be executed.

Findings no infirmity and illegality in the judgments and decrees of the Courts below, both the present appeals are hereby dismissed.

February 07, 2018
Vijay Asija

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No