

RSA-3726-2016 (O&M)

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

**RSA-3726-2016 (O&M)
Date of decision : 29.11.2018**

Surjit Kaur

... Appellant

Versus

Sham Lal and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Arun Sharma, Advocate for the appellant.

AMIT RAWAL, J.

CM-9762-C-2016

Allowed as prayed for.

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The appellant-plaintiff has not been successful in claiming the possession of the portion shown in blue colour in the site plan attached of House No.7111/5 measuring 250 sq. yds and injunction qua the area in red colour.

The plaintiff claimed to have inherited the property by virtue of the Will dated 11.03.2002 executed by Prem Chand, who expired on 12.08.2009. The defendants according to the averments, were none-else, but the children of the plaintiff.

The defendants opposed the ownership of Prem Chand, much less, execution of the Will and denied the possession of the plaintiff.

Learned counsel appearing on behalf of the appellant submitted that both the Courts below have abdicated in denying the relief of possession on the premise that the plaintiff failed to prove the ownership of

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Prem Chand, whereas testimony of son of the witness-Santokh Singh to the Will, namely, Iqbal Singh-PW2, remained unshattered. The plaintiff being mother living in the same house sought the injunction qua forcible interference and dispossession. Though the defendants were *ex parte* before the trial Court, but in appeal they contested the suit, but did not deny the possession. In such circumstances, the Courts below at the best should have confined the decree by issuing the injunction.

I am afraid the aforementioned argument is not sustainable as the plaintiff miserably failed to prove ownership of the testator-Prem Chand and rightly so, the relief of possession has been declined. Regarding injunction, no documentary evidence except self serving statement of the plaintiff, has been led to establish the possession for the purpose of injunction. In such circumstances, the Courts below had no occasion, but to dismiss the suit.

Keeping in view the aforementioned facts, I do not find any illegality and perversity in the concurrent findings of fact, much less, no substantial question of law arises for determination. No ground for interference is made out.

Resultantly, the regular second appeal is dismissed.

29.11.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**