

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

RSA-4058-2016 (O&M)
Date of Decision: 12.10.2018

Ravi Chand

--Appellant

Versus

Prem Chand & others

--Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. A.S. Bhatti, Advocate for the appellant.

TEJINDER SINGH DHINDSA.J (Oral)

Plaintiff is in second appeal having remained unsuccessful in both the courts below.

Counsel for the appellant has been heard at length.

Briefly noticed, plaintiff Ravi Chand filed a suit for declaration that he is absolute owner/in alternative joint owner in possession of portion shown as red of house marked as ABCDEF in the site plan attached along with the plaint and for permanent injunction restraining defendants from forcibly dispossessing him from the suit property. Suit was dismissed by the Trial Court on 8.1.2013 and a civil appeal preferred by the plaintiff has met the same fate vide judgement dated 27.4.2016 passed by the learned Additional District Judge, Hoshiarpur.

Case set up by the plaintiff-appellant was that the land upon which the house in dispute was constructed had been purchased in the name of Asha Rani i.e. deceased mother of the plaintiff. Construction of the portion reflected in red colour was raised by the plaintiff-appellant from his own pocket in pursuance to a family settlement arrived at between the plaintiff and the defendant as also their mother. Father of the appellant died in the year 1971 and mother Asha Rani died on 29.8.2007. It was asserted

that defendant no.1 has fabricated a Will allegedly executed by their mother Asha Rani and is denying the rights of the plaintiff-appellant on the suit property.

A concurrent finding of fact has been returned by the courts below that the plaintiff-appellant is not in possession of any portion of the disputed house. Such factual aspect stands conceded by the appellant in his cross-examination. Findings having been returned that appellant is living in a separate house, the relief of permanent injunction has rightfully been denied.

In so far as the declaration that was being sought, the courts below have held that the defendant had produced on record a registered Will dated 27.10.2005 executed by Smt. Asha Rani i.e. mother of the parties and the same has been proved in accordance with law. The Will was a registered document and defendant proved the same by examining DW-2 Deed Writer Ram Singh and who had scribed the Will at the instance of Asha Rani in the presence of witnesses namely Varinder Nath and Jaswant Singh. Defendant further examined one of the attesting witnesses namely Varinder Nath, Lambardar and who deposed that the Will was executed by Asha Rani and she was in sound disposing state of mind at the time of execution of the Will. Plaintiff-appellant did not bring forth any suspicious circumstance with respect to the Will in question.

Furthermore, it has gone uncontroverted that relationship between mother Asha Rani (since deceased) and the plaintiff-appellant was not cordial inasmuch as the appellant had earlier filed a civil suit bearing no.983 of 2007 against his mother Asha Rani and other defendants. Such suit was dismissed as withdrawn vide order dated 21.12.2007 (Ex. D-7)

having been rendered infructuous upon the death of Asha Rani. In such suit a stay application had been preferred and which had been dismissed vide order dated 20.4.2007 (Ex.D-4) and against which even appeal had been dismissed vide order dated 12.12.2007 (Ex.D-5). Defendant-respondent had also produced on record in the court below a copy of publication in newspaper Jagbani dated 20.10.2005 and in terms of which Smt. Asha Rani had disinherited the appellant herein and his family from all her moveable and immovable properties.

Counsel further does not dispute that mutation with respect to the suit property already stands sanctioned in favour of the defendant-respondent vide order dated 29.1.2008 passed by the Assistant Collector 1st Grade, Hoshiarpur (Ex.D-10) and copy of mutation adduced on record was Ex.D-11.

In view of the above, no intervention in the matter is called for.

There is no merit in the appeal and the same is, accordingly, dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

12.10.2018
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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No