

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

RSA-5676-2016 (O&M)
Date of Decision: 13.07.2018

Achhar Singh

--Appellant

Versus

Swaran Singh & others

--Respondents

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

Present:- Mr. Sandeep Arora, Advocate for the appellant.

TEJINDER SINGH DHINDSA.J (Oral)

Heard counsel for the plaintiff-appellant at length and perused the pleadings.

Plaintiff-appellant is in second appeal before this Court having remained unsuccessful in both the courts below.

Plaintiff filed a suit for declaration to the effect that he is owner in actual, physical possession of the house and haveli situated in the area of Village Pandori Nijran, Tehsil and District Jalandhar as per details reflected in the site plan (in red color) attached along with the plaint. Further relief sought was for permanent injunction restraining defendants no.1 and 2 from interfering into the lawful and peaceful possession of the plaintiff over the suit property.

Suit was filed on the averments that originally the suit property was owned by Resham Singh i.e. father of the plaintiff and who executed a registered Will dated 18.3.2002 in favour of the plaintiff. After the death of Resham Singh, plaintiff has become owner in possession of the suit property and is residing in the house and using the haveli for tethering cattle and storing fodder etc. Plaintiff asserted that he had got his ration card, electricity bill in his name, Passport issued as well at the said address i.e.

suit property. It was alleged that defendants no.1 and 2 have attempted to take forcible possession of the suit property and have threatened the plaintiff to vacate the same. Plaintiff had also stated that defendant no.1 is the brother of father of the plaintiff and is in possession of a house in Delhi which was given to him in furtherance of an oral family settlement. Further amount was given to defendant no.1 in furtherance of the family settlement for purchase of a car to be plied as a Taxi and to earn livelihood. In a nutshell plaintiff claimed that the suit property came to the share of the father i.e. Resham Singh in furtherance of the oral family settlement.

Defendants contested the suit and filed written statement to the effect that suit property was originally owned by Didar Singh i.e. grandfather of the parties and after his death the house and haveli (suit property) are owned and possessed by his legal heirs in equal shares. It was asserted that defendant no.1 is a co-sharer and in joint possession with the plaintiff over the suit property. As such, it was contended that Resham Singh had no authority to execute any Will regarding the suit property as he was not the exclusive sole owner thereof.

From the pleadings of the parties, the following issues were framed by the Trial Court:-

- “1. Whether Resham Singh was exclusive owner of the suit properties having got the same in an oral family settlement as alleged?OPP*
- 2. If Issue no.1 is proved whether the plaintiff is owner in possession of the suit properties?OPP*
- 3. Whether the plaintiff is entitled to the injunction as prayed for?OPP*
- 4. Whether the suit is not maintainable in the present form?OPD*
- 5. Whether the suit is bad for non-joinder and misjoinder of*

parties?OPD

6. *Relief.”*

Upon due appreciation of evidence adduced on record and having heard counsel for the parties, findings were returned against the plaintiff and the suit was dismissed vide judgement dated 4.11.2011. Even a civil appeal preferred by the plaintiff has met the same fate vide decision dated 15.9.2015 passed by the learned Additional District Judge, Jalandhar.

Resultantly, the instant second appeal.

It is a case where plaintiff-appellant is claiming ownership over the suit property on the basis of a Will dated 18.3.2002 allegedly executed in his favour by his father Resham Singh. A concurrent finding has been recorded by the courts below that no evidence had come forth and adduced to prove title and possession of Resham Singh over the suit property. Furthermore, no evidence whatsoever was adduced to prove the alleged oral family settlement between the parties and on the strength of which the suit property was alleged to have come to the share of Resham Singh. Under such circumstances, the view taken by the courts below that the Will dated 18.3.2002 bequeathing suit property by Resham Singh in favour of the plaintiff to be of no consequence is well founded. Furthermore, the courts below have rightfully discarded the site plans Ex.P-3, P-4, electricity bills Ex.P-5 to Ex.P-15 and ration card Ex.P-16 as such documents could not be construed as reflecting title of the plaintiff over the suit property.

The impugned judgements are based on cogent and valid reasoning and upon due appreciation of evidence.

In the considered view of this Court no ground for interference is made out as regards the concurrent findings recorded by the courts below against the plaintiff-appellant.

Appeal is dismissed.

Since the main appeal has been dismissed, pending application (s), if any, shall also stand disposed of.

(TEJINDER SINGH DHINDSA)
JUDGE

13.07.2018

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