

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

RSA No.6408 of 2016(O&M)
Date of decision: 18.05.2018

Nand Kisore and others

... Appellants

Versus

Umesh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Sahil Khunger, Advocate for the appellants.

ARUN PALLI, J. (Oral)

The suit filed by the respondents/plaintiffs was decreed by the trial Court, vide judgment and decree dated 03.11.2012. As even the appeal preferred against the said decree failed and was dismissed on 31.08.2016, the appellants/defendants are in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

The case set out by the plaintiffs has been that; the suit property, bearing No.BS-35-14, situated in Mohalla Shahganj, near Turi Bazar, was owned by late Pt. Lahori Ram, the grandfather of the plaintiffs. During his lifetime, he executed a Will in favour of his son and father of the plaintiffs, namely, Krishan Kumar on 15.11.1957. Thus, post death of Pt. Lahori Ram, father of the plaintiffs became the exclusive owner in possession of the suit property i.e. residential house. A Will dated

20.10.1993, was executed by Krishan Kumar in favour of his wife Sushila Kumari, the mother of the plaintiffs. Father of the plaintiffs Krishan Kumar died on 22.05.1997, and pursuant to the Will dated 20.10.1993, their mother became the exclusive owner of the suit property. But, Sushila Kumari too passed away on 29.07.2000, and post her death the plaintiffs became the owner of the house in question. However, defendant No.1 claims himself to be the son of Krishan Kumar and removed all the articles of the plaintiffs lying in the said house. Thus, the suit.

In the written statement filed on behalf of defendant No.1, it was pleaded that Krishan Kumar son of Pt. Lahori Ram was earlier married to Bimla Rani and out of the said wedlock a son i.e. Nand Kisore (defendant No.1) and a daughter i.e. Hem Rani were born. Further, Bimla Rani happened to be the real sister of Sushila Kumari, and after Bimla Rani passed away Sushila Kumari started residing with Krishan Kumar to look after Nand Kisore and Hem Rani. The Will alleged to have been executed by Pt. Lahori Ram in favour of Krishan Kumar on 15.11.1957 was denied. Rather it was claimed that Lahori Ram had executed a Will dated 09.12.1975 in favour of defendant No.1 bequeathing the suit property. Therefore, Krishan Kumar had no right, title or interest in the house in question, and even if, he executed any Will in favour of Sushila Kumari that was inconsequential.

On a consideration of the matter in issue and the evidence on record, both the Courts concurrently concluded that defendant No.1 was proved to be the son of late Krishan Kumar and Bimla Rani. As regards the Will dated 15.11.1957 (Ex.P1), alleged to have been executed by Pt. Lahori Ram in favour of Krishan Kumar, it was held that none of the attesting

witness of the Will was produced by the plaintiffs. Further, it was not proved either that as those witnesses were dead, their signatures upon the alleged Will were proved by examining any of their family members. Likewise, even defendant No.1 failed to prove the Will dated 09.12.1975 that was alleged to have been executed by his grandfather Pt. Lahori Ram in his favour. In fact, the original Will was never brought on record. Though the said Will was purport to have been executed on 09.12.1975, but was got registered after over 30 years on 17.01.2006. That too when Lahori Ram had already died, somewhere in 1977. Hence, it was held to be surrounded by suspicious circumstances. And, once defendant No.1 himself had no right, title or interest in the suit property, the sale deed dated 04.05.2006, executed by him, in favour of defendants No.2 & 3, was invalid. On the contrary, for Krishan Kumar happened to be the only son of late Pt. Lahori Ram, thus, upon the death of the later, he succeeded to his estate. Whereas, the Will dated 20.10.1993, that was alleged to have been executed by Krishan Kumar, in favour of his second wife, namely, Sushila Kumari, was registered on 29.10.1993. Execution of the said Will was duly proved by the plaintiffs by examining one of its attesting witnesses, i.e. Yog Raj Sharma (PW2), and Pardeep Kumar (PW3), who scribed the Will. Thus, it was proved that Sushila Kumari became the absolute owner of the house in question. And that being so, the only and the inevitable conclusion that could be reached was that the plaintiffs, who happened to be the daughters of Sushila Kumari, succeeded to her estate post her death in equal shares. Hence, plaintiffs were owners of the suit property and entitled to obtain possession thereof. On being pointedly asked, learned counsel for the appellants could not refer to anything on record to show if the conclusions

arrived at by both the Courts were either contrary to the record or suffered from any material illegality.

Thus, no question of law, much less any substantial question of law, arises for consideration. The appeal being devoid of merit is accordingly dismissed.

(Arun Palli)
Judge

18.05.2018
Rajan

Whether speaking / reasoned:	YES
Whether Reportable:	NO