

225

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

**RSA-4014-2014 (O&M)
Date of decision : 30.04.2018**

Balram

... Appellant(s)

Versus

Darshna Rani and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sanjiv Gupta, Advocate
for the appellant.

Mr. Chirag Wadhwa, Advocate
for respondent Nos.1 to 6 and 8 to 12.

AMIT RAWAL, J. (ORAL)

The appellant-defendant is in regular second appeal against the judgment and decree of the lower Appellate Court dated 02.05.2014, whereby the suit of the respondents-plaintiffs seeking partition of the suit property has been decreed, in essence, the judgment and decree of the trial Court dated 31.10.2011 dismissing the suit, aforementioned, has been set aside.

The respondents-plaintiffs instituted the suit claiming partition with consequential relief of permanent injunction restraining the defendant from alienating the property more than 1/5th share in any manner on the premise that the property in dispute was owned by Kalu Ram, who died on 05.05.1978 thus the suit property was inherited by his widow Seria Devi.

The aforementioned suit was filed against Balram being son of Seria Devi

and Kalu Ram for partition of the suit property. The trial Court on the basis of the preponderance of evidence dismissed the suit on the premise that the plaintiffs did not prove the ownership of Kalu Ram. However, in an appeal, the lower Appellate Court decreed the suit by setting aside the judgment and decree of the trial Court.

Learned counsel appearing on behalf of the appellant-defendant submitted that the plaintiffs miserably failed to prove the ownership of the land in favour of Kalu Ram. Moreover, if it was so, Seria Devi had executed a Will dated 09.06.1989 in favour of Munish son of Balram/appellant, therefore, was exclusive owner in possession of the property and the plaintiffs could not claim as alleged. However, the property had also been inherited by way of natural succession and all the parties to the *lis* got their respective shares, for, the property in dispute was bequeathed in favour of Munish Kumar. He further submitted that plaintiffs did not file the suit for partition of agricultural land, thus, there is a gross illegality and perversity in the judgment and decree of the lower Appellate Court as the suit is liable to be dismissed for non-impleadment of Munish Kumar.

Learned counsel appearing on behalf of the respondents-plaintiffs submitted that the property in dispute is situated in *lal dora*. There was no dispute to the ownership of the property at the hands of Kalu Ram. If it is not so, the defendant would not be able to set up a plea of bequeath of the entire property in favour of Munish by virtue of the Will *ibid*. The Will had been discarded, for, no attesting witness had been examined. Even the suit claiming injunction and declaration against the present plaintiffs by Munish was dismissed under Order 9 Rule 8 CPC. The

part of the land was acquired by way of petition under Section 30 of the Land Acquisition Act and the Will was also rejected. The judgment and decree of the lower Appellate Court being the last Court of fact and law is based upon the examination of the evidence, therefore, there is no illegality and perversity and urges this Court for dismissal of the present regular second appeal.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no merit and force in the submissions of Mr. Gupta, as the ownership of the property at the hands of Kalu Ram was not denied, for, Balram Singh/appellant, one of the siblings of the respondent/plaintiff, and son of Kalu Ram and Seria Devi, set up a Will dated 09.06.1989, whereby Seria Devi was stated to have bequeathed the entire property in favour of his son-Munish. Even the aforementioned Will has not been proved by examining any attesting witnesses. There were at the instance of Munish two proceedings initiated by propounding the Will i.e. one Civil Suit and other the proceeding under Section 30 of the Act, as noticed above and in those proceedings, the Will was discarded. Be that as it may, once the appellant-defendant had not been able to prove the Will, it leads to an irresistible conclusion that the estate was inherited by way of natural succession. In my view, the appellant-defendant has not been able to prove the devolution of the interest in the entire property by virtue of the Will.

The argument of Mr. Gupta, with regard to the other land is not sustainable in the eyes of law, for, as noticed by the lower Appellate Court, the land was already partitioned as Balram/appellant had sold his share to a third party.

Keeping in view the aforementioned facts and circumstances, I do not find any illegality and perversity in the judgment and decree of the lower Appellate Court as the same is based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination.

This Court vide order dated 07.02.2018 has imposed the costs of ₹2500/- on the learned counsel for the appellant-defendant to be deposited with the Bar Association of this Court and as per office report dated 26.04.2018, costs of ₹2500/- has not been deposited. Learned counsel for the appellant-defendant is directed to deposit the same within a period of 15 days from the date of the receipt of the certified copy of this order, failing which, the Registry is directed to list the matter in *katcha peshi* for compliance.

Resultantly, the present regular second appeal is dismissed.

30.04.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**