

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

RSA No. 4794 of 2014(O&M)

Date of decision: 17.12.2018

Ashwani Kumar Verma

.....Appellant

VERSUS

Sanjiv Verma and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. V.K. Jindal, Senior Advocate with
Mr. Gopal Soni, Advocate for the appellant.

Ms. Kamalpreet, Advocate for respondents No.1 and 2.

REKHA MITTAL, J.

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit for partition of house No.302/18, situated in New Char Chaman, Karnal, detailed in head-note of the plaint, filed by respondents No.1 and 2 was decreed by the trial Court vide judgment and decree dated 06.04.2011. The appeal preferred by contesting defendant No.1 Sh. Ashwani Kumar Verma was dismissed by the Additional District Judge, Karnal on 25.04.2014.

Indisputably, the suit house was previously owned by Sh. Dharam Pal Verma, father of the parties. Sh. Dharam Pal Verma passed away on 05.02.2004 leaving behind the plaintiffs, defendants and his widow as his legal heirs. The widow of Dharam Pal Verma also died on 31.12.2004. The respondents/plaintiffs claimed their right in the suit house

on the basis of natural succession to Sh. Dharam Pal Verma and his wife being son and daughter of said Dharam Pal Verma. On the contrary, appellant/defendant No.1 has set up Will dated 15.10.2003 purported to be executed by Sh. Dharam Pal Verma in his favour, therefore, he claimed himself to be exclusive owner of the house in question on the basis of testamentary succession.

The trial Court framed issues to the following effect:-

1. Whether the plaintiffs are entitled to decree for partition of House No.302/18, New Char Chaman, Karnal as per their shares? OPP
2. Whether the suit of the plaintiffs is not maintainable? OPD
3. Relief.

Both the Courts rejected Will dated 15.10.2003 and parties were held entitle to suit house on the basis of natural succession and accordingly a preliminary decree was passed declaring both the plaintiffs entitle to 1/5th share each along with defendants in the suit house.

Counsel for the appellant would urge that the Courts have committed a serious error rather perversity by rejecting the Will propounded by the appellant, executed by his father. It is argued that the appellant examined Ramesh DW-2, one of the attesting witnesses of the Will and Sh. Vinod Kumar, Advocate, scribe of the Will. It is further argued that on appreciation of testimonies of Ramesh and Vinod Kumar, it can unhesitatingly be held that the appellant has proved the Will in accordance with the provisions of Section 63 of the Indian Succession Act, 1925 read with Section 68 of the Indian Evidence Act, 1872. It is further argued that Sanjiv Verma - plaintiff No.1 is a resident of Panchkula and

daughters of Sh. Dharam Pal Verma are married and settled in their matrimony, therefore, Sh. Dharam Pal Verma executed the Will in favour of Sh. Ashwani Kumar Verma who had been residing in the suit house with his family consisting of his wife, two daughters and a son. Counsel would inform that Sh. Ashwani Kumar Verma died during pendency of appeal and all his class-I heirs have been impleaded as legal representatives vide order dated 23.08.2016 passed by this Court. He would pray that even on equitable consideration, family of Sh. Ashwani Kumar Verma should be allowed to live peacefully in the house in question as daughters of Sh. Ashwani Kumar Verma are of marriageable age and the family has no source of income after unfortunate demise of Sh. Ashwani Kumar Verma.

Counsel representing the respondents/plaintiffs has supported judgments of the Courts with the submission that Will propounded by the appellant has not been proved in accordance with law and the Courts have rightly refused to rely upon testimony of Ramesh and Vinod Kumar, Advocate, examined by the defendant/appellant. Counsel has carried the Court through cross examination of Ramesh DW-2 and Vinod Kumar DW-3 in order to contend that their testimony is not at all sufficient even to establish identity of Dharam Pal Verma, alleged testator of Will Ex.D3. She would further submit that family of Sh. Ashwani Kumar Verma is neither ready to give share to the respondents/plaintiffs nor they are willing to pay price of their share, particularly in the circumstances that wife of Sanjiv Verma is suffering from Cancer and he needs money for her treatment.

I have heard counsel for the parties, perused the paper-book and copies of documents i.e. Will Ex.D3 and cross examination of Ramesh DW-2 and Vinod Kumar, Advocate DW-3.

Before adverting to the submissions made by counsel for the parties, it is pertinent to mention that in pursuance of order dated 15.12.2018 passed by this Court, respondents No.1 and 2 are present in the Court. They have expressed their inability to settle the dispute except if the LRs of Sh. Ashwani Kumar Verma agree to pay price of their share. However, counsel for the appellant has not responded.

There is no dispute that the plaintiffs and defendants are the sons and daughters of Sh. Dharam Pal Verma, erstwhile owner of the suit house. The appellant has claimed exclusive ownership of the suit house on the basis of testamentary succession by propounding Will dated 15.10.2003 purported to be executed by Sh. Dharam Pal Verma. To prove the Will, Ramesh DW-2 and Vinod Kumar, Advocate DW-3 were examined. Ramesh DW-2 in the opening lines of his cross examination would state that he had come to the Court with Ashwani and he knows him since childhood. A relevant extract from his cross examination in Hindi but translated in English reads as follows:-

“On Ex.D3 my signatures are there as a witness but I do not remember the date on which I appended my signatures. I do not know who else signed Ex.D3. Voluntarily stated that Verma Ji father of Ashwani, Parveen and Typist and one Advocate were there. I do not know Parveen and Advocate. I do not know whether Parveen signed the Will or not. Will was read over to me. Ashwani was not with me. The time of

Will was 11. I had gone to Court for my work and then they called me. I do not know if Ex.D3 is signed by Dharam Pal or not.”

A plain but careful reading of the aforesaid extract leaves no manner of doubt that facts elicited in cross examination of Ramesh are sufficient to conclude that his testimony is not enough to prove attestation of the Will by other witness namely Parveen. As per the settled position in law, a Will is required to be attested by two witnesses but attestation by the witnesses can be proved by examining one of them. In this view of the matter, I find merit in contention of the respondents that testimony of Ramesh is not sufficient to prove the Will in consonance with the provisions of Section 68 of Evidence Act.

Sh. Vinod Kumar, Advocate DW-3 is the scribe of the Will. Counsel for the appellant has not denied that statement of scribe cannot be read as statement of attesting witness of the Will. Perusal of cross examination of Sh. Vinod Kumar, Advocate, leads to positive finding that he did not know Dharam Pal Verma personally, therefore, he is unable to prove that he scribed the Will at the instance of Sh. Dharam Pal Verma, father of the parties. The witness would state that he had seen some identity card of Dharam Pal Verma issued by Punjab National Bank but no copy of such identity card was kept by the witness for production in the Court in order to establish that he scribed the Will at the instance of person to whom the said identity card belonged to. In this view of the matter, the Courts have rightly concluded that the appellant failed to prove the Will, in accordance with law, therefore, he cannot claim exclusive ownership of suit house on the basis of testamentary succession to Sh. Dharam Pal

Verma. As such, no error much less perversity can be noticed in consistent findings recorded by the Courts rejecting the Will propounded by the appellant and as a natural corollary declaring the respondents/plaintiffs to be entitle to 1/5th share each in suit house on the basis of natural succession.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed, leaving the parties to bear their own costs.

DECEMBER 17, 2018		(REKHA MITTAL)
‘D. Gulati’		JUDGE
Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no