

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.3497 of 2017 (O&M)

Date of Decision: November 12, 2018

Subhash Chand (since deceased) through L.Rs.

...Appellants

Versus

Aman Parkash @ Aman Kumar & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Saurabh Garg, Advocate,
for the appellants.

AMIT RAWAL, J.

CM No.8452-C of 2017

For the reasons mentioned in the application, which is supported by an affidavit, delay of 169 days in re-filing the appeal is condoned.

CM stands disposed of.

RSA No.3497 of 2017

Appellant-plaintiffs had not been successful in seeking declaration of ownership with regard to 1/3rd share along with defendant Nos.4 to 8 and 9 to 13 in respect of suit property by laying challenge to the registered release deed dated 13.07.2001 executed by Vidyawanti widow of Iqbal Singh and mutation No.131 dated 26.10.2005 in favour of defendant Nos.1 and 2.

It was alleged that Iqbal Shah and Vidyawanti had a son, namely, Dayal Shah (defendant No.3), who was adopted by Kartar Devi @

Rup Rani vide adoption deed dated 08.05.1972 when he was infant, thus, for all intents and purposes, Dayal Shah did not have any right and title with the suit property. Iqbal Singh, in a suit bearing No.147 dated 1974 titled as Dayal Shah Versus Iqbal Singh, had given land measuring 2231 marlas to Dayal Shah and vide decree in civil suit No.752 of 1990 titled as “Aman Kumar Versus Dayal Shah, Dayal Shah had given some land to defendant No.1 Aman Parkash @ Aman Kumar son of Dayal Shah. Once Dayal Shah was adopted, Vidyawanti could not have relinquished the right in favour of adopted son.

Defendant No.1 opposed the suit and alleged that the suit land was exclusively owned and possessed by defendant Nos.1 and 2 on the basis of the registered release deed executed by Vidyawanti, their grand mother in their favour. Even a Will dated 13.07.2001 was executed.

On the preponderance of the evidence, the trial Court dismissed the suit and the appeal laid before the Lower Appellate Court was also dismissed.

Mr. Saurabh Garg, learned counsel appearing on behalf of the appellant-plaintiffs submitted that both the courts below have committed illegality and perversity in dismissing the suit as the relinquishment deed could not have entered, for, there was no pre-existing rights. Dayal Shah did not remain the legal son and, therefore, his children could not have succeeded to any right in the estate of Vidyawanti and the plaintiffs, being natural sons, were liable to succeed, therefore, there is gross illegality and perversity.

I am afraid, the aforementioned argument is not sustainable as from the date of execution of the release deed dated 13.07.2001 till the

death of Vidyawanti on 27.08.2005, nobody raised any finger. There is no bar in law where a person owner of self-acquired property can dispose of the property either by way of testamentary document or through a registered deed. Defendant Nos.1 and 2 are the sons of Dayal Shah and they would be, thus, grand children of Vidyawanti. The aforementioned act, as per the evidence brought on record, had been proved out of love and affection.

For the reasons stated above, I do not subscribe to the argument of the learned counsel to form a different opinion than the one arrived at by the courts below. No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed.

November 12, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No