

RSA No.4182 of 2017 (O&M)

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

RSA No.4182 of 2017 (O&M)

Date of decision : 29.08.2018

Kaptan Singh

... Appellant

Versus

Suresh Chand Sharma

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ankush Chaudhary, Advocate for
Mr. Sukhdeep Parmar, Advocate for the appellant.

AMIT RAWAL, J. (ORAL)

The appellant-plaintiff has not been successful before the lower Appellate Court in defending the decree of ejectment passed by the trial Court.

Learned counsel for the appellant-plaintiff submitted that the suit for ejectment was filed by the plaintiff against the defendant as both the parties to the *lis* are none-else, but the brothers being sons of Gordhan Dass. The plaintiff asserted the right/title in the property on the basis of the Will dated 21.09.1985, purportedly executed by Gordhan Dass, in his favour. It was alleged that the suit for ejectment was filed owing to the de-notification of the area as Municipal Committee as per the provisions of Haryana Urban (Control of Rent & Eviction) Act 1973. The trial Court believed that the Will had been proved through the attesting witness. The statement of PW-3, Anand Parkash, attesting witness, had not been shattered despite extensive cross-examination, therefore, the lower Appellate Court abdicated in reversing the well-reasoned judgment and decree of the trial Court. The sole basis for reversing the finding was that the appellant-plaintiff participated in the execution of Will, that cannot be treated as fatal keeping

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in view the relationship between the parties i.e. testator and plaintiff, thus, there is gross illegality and perversity in the judgment and decree of the lower Appellate Court.

I have heard learned counsel for the appellant-plaintiff, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Chaudhary, for, it has been proved on record through cross-examination of PW3 Anand Parkash that the plaintiff-Kaptan Singh had participated in the execution of the Will executed by Gordhan Dass. It is a settled law that a beneficiary, who has been instrumental in obtaining the Will in his favour, the same cannot be looked into and deemed to have been suffering from suspicious circumstances. This is the precise finding of the lower Appellate Court. In other words, the witness of the plaintiff has shattered the case of the plaintiff. No other witness or deed writer has been examined. In such circumstances, the lower Appellate Court being the last Court of fact and law, in my view, had examined evidence in correct perspective.

Keeping in view the aforementioned facts, I do not find any illegality and perversity in the judgment and decree of the lower Appellate Court, much less, no substantial question of law arises for determination.

No ground is made out for interference.

The present regular second appeal is dismissed.

(AMIT RAWAL)
JUDGE

29.08.2018
Yogesh Sharma

Whether speaking/reasoned **Yes**

Whether Reportable **No**