

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.52 of 2017 (O&M)

Date of Decision: November 15, 2018

Gurdev Singh

...Appellant

Versus

Tirlok Chand & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. S.S.Sahu, Advocate,
for the appellant.

AMIT RAWAL, J. (Oral)

CM Nos.86-C & 87-C of 2017

For the reasons mentioned in the applications, which are supported by affidavits, delay of 2 days in re-filing and 7 days in filing the appeal is condoned.

Applications stand disposed of.

RSA No.52 of 2017

Appellant-defendant is aggrieved of the concurrent findings of fact and law, whereby preliminary decree in a suit for separate possession by according status to the extent of 5/24th share to the parties to the lis, has been passed.

Plaintiff-respondent No.1 sought the separate possession on the premise that the property belonged to the mother Raj Rani. On her demise, the children, i.e., plaintiff and defendants had a share. The entry in the name of Sahab Singh in the municipal records could not confer any ownership, but the defendants denied the share, therefore, the suit aforementioned was filed.

Appellant-defendant opposed the suit by propounding the Will of Sahab Singh, the father, dated 25.08.2008 (Ex.D4) and agreement dated 31.10.1994 (Ex.D3) executed by plaintiff, whereby he had relinquished his right in lieu of payment of ₹ 38,000/-.

Both the parties led evidence. The trial court decreed the suit by belying the stand of the appellant-defendant.

Mr. S.S.Sahu, learned counsel representing the appellant-defendant submitted that DW-2 Amrik Singh, the attesting witness of the agreement dated 31.10.1994 proved the writing, whereby plaintiff had surrendered the ownership right in the suit property and had accepted a sum of ₹ 38,000/-, but his testimony has been brushed aside for no reasons. The Will has also been proved through the testimony of the attesting witness DW-4, therefore, there was compliance of provisions of Section 68 of the Indian Evidence Act. It has also been proved on record that on demise of the mother, the suit property transferred in favour of Sahab Singh in the records of the Municipal Committee. Since he had bequeathed the entire property in favour of the defendants, plaintiff had no right in the property, for, the agreement was to be ignored.

I am afraid, the aforementioned argument is not sustainable as DW-3 in cross-examination admitted that when he came to the Panchayat, date of 31.10.1994 had already been written, therefore, he did not read the contents whereof. In such circumstances, the agreement has rightly been brushed aside.

It has been proved on record that the entire estate was owned by the mother, but, however, for the purpose of assessment, name of father Sahab Singh was entered in the municipal records. The entry in the

municipal records for the purpose of assessment would not confer title upon Sahab Singh, thus, the execution of the Will without any title and interest would be meaningless. In the absence of any testamentary document of the mother, courts below have rightly determined the share amongst the siblings by passing a preliminary decree.

As an upshot of the aforementioned discussion, in my view, the judgments and decrees of the courts below do not suffer from any illegality or perversity. No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed.

November 15, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No