

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

RSA No.91 of 2017

Date of Decision : 14.05.2018

Ashish Kumar

.....Appellant

Versus

Ajay Kumar and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Bhag Singh, Advocate for the appellant.

ARUN PALLI, J. (Oral)

Suit filed by respondent No.1/plaintiff was decreed by the trial Court vide judgment and decree dated 21.11.2013, and the counter claim preferred by respondent No.3 (defendant No.2), had since been dismissed. As even the appeal preferred against the said decree by appellant/defendant No.4 only, failed and was dismissed on 13.05.2016, he is in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

Plaintiff Ajay Kumar claimed a decree for possession by partition of the property bearing House Tax No.811/11, Sharda Nagar, Jalbera Road, Ambala City. And for injuncting the defendants from alienating the suit land in excess of their respective share or a particular portion thereof without getting the same partitioned. In brief, the case set by the plaintiff was that the suit property was originally a plot measuring 376 square yards and was purchased by the father of the plaintiff (Ram

Chander), defendants No.1 to 3 and the grand father of defendant No.4, from its previous owner Shri Sukhdev Singh, vide sale deed dated 24.01.1979. The remaining Western portion of this property, measuring 188 square yards, was purchased by Smt. Urmila mother of the plaintiff and defendants No.1 to 3 and grand mother of defendant No.4, pursuant to sale deed dated 30.03.1979, from its owner Shri Waryam Singh. After these sites were bought by the parents of the plaintiff, and defendants No.1 to 3 a house was constructed thereupon, which was allotted House Tax No.811/11 by the Municipal Committee, Ambala. Post death of Smt. Urmila, the portion of the house owned by her was succeeded to by her husband Ram Chander and her four sons in equal shares. Thereafter, even Ram Chander passed away on 02.01.2005, and during his life time he executed a will dated 9.3.2001, vide which, he bequeathed the suit property in favour of his four sons i.e. plaintiff and defendants No.1 to 3 in equal shares, since the property was still joint and was not partitioned between the parties, thus the suit for separate possession by way of partition qua 1/4th share of the plaintiff.

In the joint written statement filed by defendants No.1 and 4 it was pleaded that late Ram Chander had executed a registered will dated 22.02.1999 in favour of defendant No.4, who happened to be the minor son of defendant No.1. The will dated 9.3.2001 set up by the plaintiff was alleged to be a forged and fabricated document.

In a separate written statement filed by defendant No.2, though he admitted the execution of will dated 9.3.2001, but by way of counter

claim he pleaded a family partition that was affected during the life time of late Ram Chander, vide which the suit property had since been partitioned, and the portion marked as ABCD in the site plan, appended with the counter claim, had fallen to his share upon which he had raised some construction.

On a consideration of the matter in issue and the evidence on record both the Court concurrently concluded that parties to the lis had set up two separate wills qua the suit property. Vide will dated 22.02.1999 (Ex.D7), the suit property was alleged to have been bequeathed by late Ram Chander in favour of defendant No.4, whereas pursuant to the will dated 9.3.2001 (Ex.P1), the suit property was transferred by late Ram Chander in favour of his four sons in equal shares. However, no reason was assigned in the will dated 22.02.1999 to ignore the four living sons by late Ram Chander. There was no occasion to give the suit property to Ashish (defendant No.4) who was merely 8/9 years at the time of execution of will in the year 1999. Even earlier in the year 1993 a will was executed in favour of Ashish but that was ignored in the will dated 22.02.1999 Ex.D7. On the contrary, the will Ex.P1 was duly proved. Plaintiff examined Darshan Kumar Aggarwal, Document Writer (PW1), who testified in his deposition that he typed the will (Ex.P1) which was read over and explained to late Ram Chander in the presence of the witnesses, who after understanding and admitting the same to be correct sign/thumb marked the same. Accordingly, an entry as regards the execution of the said will was made in his register (Ex.P2). Nirmal Chand Jain (PW2), one of the attesting

witness of the will also proved its execution in his deposition. He also testified that the will (Ex.P1), was typed by Darshan Kumar upon instructions of late Ram Chander. The will (Ex.P1) was got attested from the Notary Public who too was examined as PW3 and deposed that he had made entries qua the will in his register (Ex.P3). Further, the plaintiff even examined Mani Jain, Hand Writing Expert (PW4), who proved the signatures of the deceased, appended on the will (Ex.P1). Plaintiff also appeared as his own witness (PW5) and duly substantiated his claim. Thus, the provisions of Section 63 of the Indian Succession Act and Section 68 of the Indian Evidence Act were duly satisfied. Undoubtedly, by virtue of the will dated 22.02.1999 (Ex.D7), the suit property would have been succeeded to only by Ashish, therefore, to cancel the said will Ram Chander executed the will in favour of all his four living sons in equal shares. For, the will dated 9.3.2001 was alleged to be forged and fabricated document, even a criminal case was got registered against the plaintiff. However, the said FIR was quashed by this Court. But, it was observed that the will (Ex.P1) could be treated as good only qua the property owned by Ram Chander himself and for the share he had succeeded to on account of the death of his wife. For, a plot measuring 188 square yards was owned by his wife, which post her death was succeeded to by her four sons and her husband in equal shares. Therefore, late Ram Chander had a right to bequeath only 1/5th share, he had inherited from the property of his wife, and not qua the share of his four sons which they inherited post death of their mother. But as the execution and validity of the will (Ex.P1), was

duly proved, and the same being the last testament of the deceased, the will propounded by defendants No.1 to 4, even otherwise paled into insignificance. For, no cogent evidence was brought on record to prove the alleged family partition, the issue in this regard was accordingly decided against defendant No.2. Resultantly, a preliminary decree for possession, declaring plaintiff to be the owner of 1/4th share in the suit property was passed will dated 22.02.1999 propounded by defendants No.1 to 4 was declared as illegal, null and void. The property owned by the mother of the plaintiff and defendants No.1 to 3, was held, would be succeeded to by her four sons by way of natural succession. And the counter claim of defendant No.2 was dismissed for lack of cogent evidence.

On being pointedly asked, learned counsel for the appellant/defendant No.4, could not refer to anything on record if the conclusion reached by the Appellate Court was either contrary to the record or suffered from any material illegality. Thus, no question of law, much less any substantial question of law, arises for consideration. The appeal being devoid of merit is accordingly, dismissed.

14.05.2018

*Manoj Bhutani***(ARUN PALLI)
JUDGE**Whether speaking/reasoned
Whether reportableYes/No
Yes/No