

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

**RSA No.990 of 1985 (O&M)
Date of Decision.05.02.2019**

Parvin Mehra and others

...Appellants

Vs

The Arya Samaj, Lawrence Road, Amritsar and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. V.K. Sandhir, Advocate
for the appellants.

Mr. B.R. Mahajan, Senior Advocate with
Ms. Manpreet Ghuman, Advocate
for the respondents.

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AMIT RAWAL J. (ORAL)

The present regular second appeal is directed against the concurrent finding of fact whereby the suit of the respondent-plaintiff for separate possession by partition of half share in respect of house and mesne profits has been decreed by the trial Court and affirmed in appeal by the lower Appellate Court.

It was alleged that Ishar Devi widow of Nanak Chand was owner in possession of the bungalow known as Alka, 3-Daya Nand Nagar, Amritsar. She had executed Will dated 01.06.1939 registered on 15.03.1961 with the Sub Registrar bequeathing half share of the disputed bungalow to her daughter, Dr. Laxmi Devi, L.S.M.F and the remaining half share to her three sons namely Dharam Pal, Sat Pal and Kapal Dev. Ishar Devi died on 17.02.1943. Dr. Laxmi Devi wife of defendant No.1 became owner in possession of the half share and other three sons of remaining half share and

their status was of a co-sharer. Dr. Laxmi Devi died on 08.08.1970 and her only child also died. Defendant No.1, her husband, came into ownership in possession of half share of disputed bungalow and according to wishes of Laxmi Devi entered into settlement dated 5.9.1975 with the plaintiff and started Arya Samaj Religious and Charitable Trust and became trustee of the aforementioned property and the possession was also delivered. Defendants No.2 to 7, who were in possession of the bungalow intimated status of the plaintiff as co-sharer to the extent of half share but was not responded

Defendant No.1 did not resist the suit rather admitted claim of the plaintiff in the written statement as well as Will of Ishar Devi, much less, the settlement deed.

Defendant No.2 Dharam Pal resisted the suit by raising numerous preliminary objections but admitted that Ishar Devi was owner of the disputed bungalow, much less, execution of the Will, which was later on registered, and her death in 1943. It was stated that the property had been in his exclusive possession ever since the death of Ishar Devi, therefore, had become the owner of the entire property and denied that defendant No.1 was having any right and title to enter into alleged settlement. A plea of adverse possession was also taken by claiming long, settled and uninterrupted possession.

Since the parties were at variance trial Court framed following issues as well as additional issues:-

“1. Whether the plaintiff has locus standi to file the suit and Dr. Dev Vrat is competent to file the suit? OPP

2. *Whether the suit for partition is not legal and competent? OPD*
3. *Whether the suit is properly valued for the purpose of court fee and jurisdiction? OPP*
4. *Whether the property has been properly described in the plaint? OPP*
5. *Whether suit for mesne profits does not lie? OPD*
6. *Whether the plaintiff has ½ share in the property in dispute? OPP*
7. *Whether deed of settlement dated 5.9.75 is illegal, void, not binding on defendant No.2? OPD*
8. *Whether defendant No.2 is in exclusive possession as owner of the property in dispute since the death of Isher Devi on 17.2.43? OPD*
9. *Whether the plaintiff is entitled to recover mesne profits/compensation for ½ share of the building in dispute? If so to what extent? OPP*
- 9-A. *Whether the plaintiff is estopped by his act and conduct from filing the suit? OPD*
- 9-B. *Whether the defendant has become owner of the property by adverse possession? OPD*
- 9-C. *Whether the plaintiff's suit is not within limitation? OPD*
10. *Relief."*

The plaintiff in support of evidence examined four witnesses and brought on record Ex.P1 to PW1/18 and Mark A to

Mark N whereas defendants did not lead any evidence.

The trial Court decreed the suit and appeal taken before the lower Appellate Court was also dismissed.

Mr. V.K. Sandhir, learned counsel appearing on behalf of the appellants submitted that the judgment and decree of the lower Appellate Court is totally erroneous and perverse as defendant No.1 cannot succeed to the estate of Laxmi Devi, in view of sub-section 2 (a) of Section 15 of the Hindu Succession Act. In such circumstances, defendant No.1 (respondent No.2 herein) could not enter into settlement in favour of the plaintiff, as he did not acquire any right in the house on account of death of his wife. In the absence of the same, did not have any alienable or saleable right, therefore, plaintiff could not acquire the ownership to the extent of half share. Defendant No.2 had been in exclusive possession of the suit property to the exclusion of Dr. Laxmi Devi during the period from 17.02.1943 to 08.08.1970, as Laxmi Devi resided at Dehradun from 1949 to 1970, therefore, plea of ouster against the co-owner is permissible in law, thus, urges this Court for setting aside the concurrent finding of fact.

Per contra, Mr. B.R. Mahajan, Ld. Senior Counsel assisted by Ms. Manpreet Ghuman, learned counsel appearing on behalf of the respondents submitted that the judgments and decrees of the Courts below do not suffer from any illegality and perversity. Concededly, defendants, as per the Will of Ishar Dvi are owners to the extent of half share and with regard to entitlement of share of Laxmi Devi, on her demise, defendant No.1 entered into settlement.

Plaintiff is a charitable trust indulging into philanthropic activities. It cannot be said that defendant No.1 cannot enter into settlement, in view of sub-section 2(a) of Section 15 of the Hindu Succession Act. A person who has set up adverse possession deemed to have admitted title of the plaintiff. Defendants failed to prove ouster. Since succession could not remain in abeyance, it was Dina Nath, husband of Laxmi Devi, was manager and custodian of the property, thus, urges this Court for dismissal of the appeal.

I have heard learned counsel for the parties, appraised the paper book, records of courts below and of the view that following substantial questions of law arise for determination:-

- (i) Whether defendant No.1 Dina Nath could enter into settlement dated 5.9.1975 Ex.PW1/18 in favour of plaintiff, by acquiring half share in the suit property and could claim partition?
- (ii) Whether half share on demise of Laxmi Devi was liable to be reverted to defendants?

The settlement deed dated 05.09.1975, Ex.PW1/18 has been proved through the testimony of PW2 Inder Singh, clerk of office of Sub Registrar and PW3 Jugal Kishore, attesting witness. He was in constructive possession of the suit property till sold to the plaintiff under the deed of settlement. The possession of defendant No.2 was not exclusive but was on behest of other co-sharers. It is settled law that a co-sharer, who is in possession of the land, is custodian of every inch for all other co-sharers. The factum of defendant No.1 being husband of Laxmi Devi had not been denied.

Provisions of sub-section 1(a) of Section 15 provides that wherever a female Hindu died intestate, her property would first devolve upon sons and daughters (including children of any pre-deceased son or daughter) and the “Husband”. For the sake of brevity, Section 15 of the Hindu Succession Act is extracted herein below:-

“15. General rules of succession in the case of female Hindus.—

(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16,—

(a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;

(b) secondly, upon the heirs of the husband;

(c) thirdly, upon the mother and father;

(d) fourthly, upon the heirs of the father; and

(e) lastly, upon the heirs of the mother.

(2) Notwithstanding anything contained in sub-section (1),—

(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father; and

(b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.

It is matter of record that only child of Dina Nath and Laxmi Devi pre-deceased. In such circumstances, it was husband, who had inherited the property, therefore, provisions of Section 15 (2) (a) of Hindu Succession Act would not be attracted. Defendants did not challenge the settlement by setting up a counter claim, though suit for partition was preferred on 4.11.1977. There is no dispute to the validity of the Will and death of Laxmi Devi.

In view of aforementioned facts, concurrent finding of fact cannot be said to be suffering from illegality and perversity. The substantial questions of law are answered against the appellants-defendants and in favour of the respondents-plaintiffs. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

February 05, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable Yes