

RSA-4113 of 2019 (O&M)

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

RSA-4113 of 2019 (O&M)
Date of decision: 04.09.2019

Gulshan

.....Appellant

versus

Ashwani Chhabra and others

.....Respondents

RSA No.4115 of 2019 (O&M)

Gulshan

.....Appellant

versus

Ashwani Chhabra and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Bikram Chaudhary, Advocate, for the appellant.

RAMENDRA JAIN, J. (ORAL)

By this common judgment, above-titled two appeals are being disposed, challenging two separate judgments of the appellate Court dated 29.05.2019, dismissing appeal of the appellant, affirming judgment and decree of the trial Court dated 15.03.2016, whereby his suit for separate possession by way of partition with consequential relief of permanent and mandatory injunction and counter claim of respondent No.1 were partly decreed.

Briefly, deceased Mehar Chand, ancestor of the parties, left

behind following five properties: -

- 1) One three storeyed building constructed on plot No.12,

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situated at Sabji Mandi Road, Hisar.

- 2) One three storeyed house No.103/14, situated at Mohalla Dogran, Hisar.
- 3) One double storeyed house No.100/14, situated at Mohalla Dogran, Hisar.
- 4) Three plots No.6 to 8, situated at Ekta Nagar, Hisar.
- 5) One shop bearing house tax No.1049/600, situated at Gobindgarh Bazar, Hisar.

Appellant along with his two sisters and children of his brother, namely, Pardeep Chhabra, claiming their $\frac{4}{5}$ th share in the said properties, filed a suit for separate possession by way of partition, pleading that abovesaid properties after the death of Mehar Chand and Sita Bai were inherited by their three sons and two daughters in equal shares. One of the sons, namely, Pardeep Chhabra had expired and respondents No.5 to 8 as his legal heirs were entitled to $\frac{1}{5}$ th share.

Suit was hotly contested by respondent No.1, filing written statement and counter-claim, pleading that during his life time, Mehar Chand had made a family partition. The same was reduced into writing on 15.08.2004. Mehar Chand had given property mentioned at serial No.1 to deceased Pardeep Chhabra and property mentioned at serial No.2 to him. According to said family settlement, Mehar Chand had kept properties mentioned at serial Nos.3 and 5 with him and had not given anything in these properties to appellant Gulshan as he was a man of vices. During his life time, Mehar Chand dis-inherited the appellant from all of his immovable properties by way of affidavit dated 10.07.2003. Therefore, he was not entitled to anything in the properties left by Mehar Chand. Property mentioned at serial No.4 i.e. three plots situated in Ekta Nagar were

purchased by deceased Pardeep Chhabra and him jointly in the name of

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their mother Sita Bai paying equal sale consideration in the knowledge of appellant-plaintiff. Therefore, in the said plots also appellant was not entitled to claim any share.

Through his counter-claim, respondent No.1 challenged registered 'will' dated 02.08.2005 in favour of appellant-plaintiff allegedly executed by their father Mehar Chand, bequeathing a shop at serial No.5 above, pleading that Mehar Chand never executed and got registered any such 'will'. It was forged one and it never saw light of the day inasmuch as plaintiff was debarred from all of his properties by their father Mehar Chand, during his life time.

After holding trial, the trial Court vide judgment and decree dated 15.03.2016, nullifying aforesaid family settlement dated 15.08.2004, simultaneously set aside 'will' dated 02.08.2005 and affidavit dated 10.07.2003 allegedly executed by Mehar Chand. Resultantly, the appellant-plaintiff, his two sisters i.e. proforma respondents No.3 & 4 and legal heirs of deceased Pardeep Chhabra i.e. proforma respondents No.5 to 8 were declared owner in possession in equal shares to the extent of 1/5th share each in the properties mentioned above.

Being aggrieved, appellant Gulshan and respondent No.1 Ashwani Chhabra approached first appellate Court by filing their respective appeals. Respondent No.1 Ashwani Chhabra laid challenge to finding of the trial Court qua nullifying family settlement allegedly executed by Mehar Chand during his life time dated 15.08.2004, whereas appellant Gulshan laid challenge to setting aside of 'will' dated 02.08.2005 executed by their father Mehar Chand in his favour qua property mentioned at serial No.5.

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Court dismissed both the appeals.

Learned counsel for the appellant-plaintiff *inter alia* contends that both the Courts below erred in not considering the statement of PW5 Mahender Kumar, DRO, in a right perspective, proving genuineness of 'will' Ex.P1. Discrepancy that 'will' (Ex.P1) was only signed by S.K. Ahuja, Advocate, without mentioning his name underneath his signatures, whereas copy of the same as Ex.PW5/A finds mention his name written beneath the signatures creates suspicion about genuineness of 'will', related to insignificant aspect of the case, because while photocopying 'will' (Ex.P1), due to carelessness, some portion mentioning the name of S.K. Ahuja, Advocate might not have been photocopied.

Having given thoughtful consideration to the submissions made by learned counsel for the appellant, this Court finds both the appeals completely devoid of any merit for the reasons to follow.

Relationship in between as offspring of Mehar Chand is not in dispute. Respondent No.1 was in exclusive ownership of some of the properties mentioned above on the basis of some memorandum of family partition dated 15.08.2004 by Mehar Chand during his life time, which has rightly been ignored and nullified by both the Courts below in view of the fact that same never saw light of the day, being not produced on the record.

As far as claim of ownership of shop mentioned at serial No.5 by appellant on the basis of 'will' dated 02.08.2005 (Ex.P1) is concerned, the same has also rightly been set aside by both the Courts below inasmuch as the original of the same also did not saw light of the day, rather was proved by the appellant by way of secondary evidence. There was another glaring

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endorsement instead of name of S.K. Ahuja, Advocate, name of Sube Singh, Advocate, was found mentioned. Above fact in itself was sufficient to declare that aforesaid 'will' is forged one.

No other point has been raised.

No question of law much less substantial has been raised in this appeal. Therefore, same is held not maintainable.

I have gone through judgments of both the Courts below and find no illegality or perversity in the same.

Dismissed.

(Ramendra Jain)
Judge

September 04, 2019
R.S.

Whether speaking/reasoned Yes/No

Whether reportable Yes/No