

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

RSA No.654 of 2011 (O&M)

Date of Decision: May 16, 2019

Surjit Kaur

.....Appellant

Versus

Surinder Kaur

.....Respondent

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Rajiv Kataria and Mr. Richudeep Bajaj, Advocates for the Appellant.

Mr. Ajay Pal Singh Rehan, Advocate for the Respondent.

SUDIP AHLUWALIA, J.

This Appeal has been preferred against the impugned Judgment and Decree passed by the Ld. Addl. District Judge, Gurdaspur in Civil Appeal No.183 of 2005 dated 24.9.2010, vide which the original Judgment & Decree passed by the Ld. Civil Judge (Junior Division) Gurdaspur in Civil Suit No.294 of 2001 dated 15.6.2005 in favour of the present Appellant/Plaintiff were upheld.

2. The Appellant happens to be the widow of Piara Singh (since deceased), who was the Defendant in the original Suit for permanent injunction filed in the Court of Ld. Civil Judge (Junior Division) Gurdaspur by the Respondent/Plaintiff. She is one of the real sisters of deceased-Defendant Piara Singh. Both of them happened to be children of deceased Mohan Singh, who also had another son namely Gian Singh and six other daughters apart from the Plaintiff/Respondent. On 30.6.1992 the said

Mohan Singh, father of the original contesting parties, executed his registered Will, which was marked Ex.P-5 by the Trial Court. In his said Will, the Testator Mohan Singh, who was owner of a two storeyed Building situated on Tibri Road, Gurdaspur, the full description of which has been given in the Plaint, had made provisions for use of the said Building including its Commercial/Shop area on the first floor for utilization of the rent and residence on the first floor in favour of his widow Bishan Kaur (since deceased) and also further provided that after the demise of said Bishan Kaur, the said Building would fall to the share of his son Piara singh (original Defendant), but that his daughters 'could otherwise' live on the first floor of the Building, without having any proprietary rights therein, nor any power to sell or transfer the said portion.

3. The Suit was thereafter filed by Respondent Surinder Kaur, whose claim was that she had lived with her deceased parents i.e. Mohan Singh and Bishan Kaur on the first floor of the said Building since childhood; that she had been married in the year 1986 even after which she used to come and reside in the Building, and about 2/3 years before the death of her father in the year 2000, she was requested by him to come and reside on the said first floor of the Building. She then shifted to the disputed portion with her family members and has been residing therein ever since. In the meantime, following the death of their parents, Defendant Piara singh, who had become owner of the Building by virtue of his father's Will dated 30.6.1992 had threatened to demolish the same with a view to deny to the Plaintiff/Respondent her right to reside on the first floor, which right she had acquired by virtue of the provisions made in the Will of her father. She therefore, filed the Suit for permanent injunction to restrain Defendant

Mohan Singh and others claiming through him from illegally and forcibly dispossessing/evicting her and her family members from the first floor of the disputed Building. The Suit was decreed in favour of the Plaintiff/Respondent as prayed for, and the Appeal preferred against the decree was also dismissed.

4. The Appellant, who is the widow/surviving Legal Representative of deceased-Defendant Piara Singh has now challenged the Judgments of both the Ld. Courts below.

5. The substance of the arguments raised on behalf of the Appellant is that both the Ld. Courts below had erred in granting a permanent injunction in favour of the Respondent/Plaintiff under a misconception that she had acquired some kind of proprietary right in the property, which was never granted to her in the first place in the Will executed by her deceased-father. In fine, it has been asserted that in terms of the said Will dated 30.6.1992 (Ex.P-5), the ownership of the entire Building had undisputedly fallen in the share of Defendant Piara Singh. As such according to the Appellant, a mere observation in the Will to the effect that the Testator's daughters (including the Plaintiff/Respondent) 'could reside' on the disputed first floor of the Building without having any right to sell or transfer any portion thereof, clearly showed that the Testator had no intention whatsoever of transferring any proprietary rights in favour of his daughters. Therefore, none of the Testator's daughters including the Plaintiff/Respondent would have been entitled to seek any relief by way of injunction as against Defendant Piara Singh, who admittedly acquired ownership of the Building in terms of the Will. In emphasizing on this submission, the assertion of the Appellant's Ld. counsel before this Court is that both the Ld. Courts below

ought to have closely scrutinized the relevant provisions giving 'residential right' to the Testator's daughters without giving them any actual right of ownership in the disputed Will in order to ascertain the true intention of the Testator.

6. Reference in this regard was made to the decision of Privy Council in **'Venkata Narasimha Appa Row, since Deceased (now represented by Meka Venkataramayya Appa Row) Vs. Parthasarathy Appa Row and Venkatadri Appa Row Vs. Venkata Narasimha Appa Row and Parthasakathy Appa Row, 1913 AIR (PC) 78**, wherein it was held –

“Their Lordships are of opinion that this reasoning is unsound. In all cases the primary duty of a Court is to ascertain from the language of the testator what were his intentions, i.e., to construe the will It is true that in so doing they are entitled and bound to bear in mind other matters than merely the words used. They must consider the surrounding circumstances, the position of the testator, his family relationships, the probability that he would use words in a particular sense, and many other things which are often summed up in the somewhat picturesque figure " The Court is entitled to put itself into the testator's armchair." Among such surrounding circumstances which the Court is bound to consider none would be more important than race and the religious opinions, and the Court is bound to regard as presumably (and in many cases certainly) present to the mind of the testator influences and aims arising therefrom. But all this is solely as an aid to arriving at a right construction of the will, and to ascertain the meaning of its language when used by that particular testator in that document. So soon as the construction is settled, the duty of the Court is to carry out the intentions as expressed, and none other. The Court is in no case justified in adding to testamentary dispositions. If they transgress any legal restrictions they must be disregarded. If they leave any eventuality unprovided for, the estate must, in case that eventuality arises, be dealt with according to the law which provides for succession of property in the absence of testamentary directions applying thereto. But the Court never adds to a will

anything which needs to be done by testamentary disposition. In all cases it must loyally carry out the will as properly construed, and this duty is universal, and is true alike of wills of every nationality and every religion or rank of life.” (Emphasis added)

7. The aforesaid decision was also relied upon by '**Navneet Lal alias Rangi v. Gokul other**', 1976 (1) SCC 630, wherein it was observed -

“C. Successions Act, 1925 Section 63 Principal of Constitution of construction of Will as summed up in Navneet Lal alias Rangi v. Gokul other, 1976 (1) SCC 630 reiterated below :-

1. In construing a document whether in English or in vernacular the fundamental rule is to ascertain the intention from the words used - The surrounding circumstances are to be considered - But that is only for the purpose of finding out the intended meaning of the words which have actually been employed.

2. In construing the language of the will the court is entitled to put itself into the testator's armchair (Venkata Narasimha v. Parthasarathy) and is bound to bear in mind also other matters than merely the words used. It must consider the surrounding circumstances, the position of the testator, his family relationship, the probability that he would use words in a particular sense - But all this is solely as an aid to arriving at a right construction of the will, and to ascertain the meaning of its language when used by that particular testator in that document.

3. The true intention of the testator has to be gathered not by attaching importance to isolated expression but by reading the will as a whole with all its provisions and ignoring none of them as redundant or contradictory.

4. The Court must accept, if possible, such construction as would give to every expression some effect rather than that which would render any of the expressions inoperative. The court will look at the circumstances under which the testator makes his will, such as the state of his property, of his family and the like. Where apparently

conflicting dispositions can be reconciled by giving full effect to every word used in a document, such a construction should be accepted instead of a construction which would have the effect of cutting down the clear meaning of the words used by the testator. Further, where one of the two reasonable constructions would lead to intestacy that should be discarded in favour of a construction which does not create any such hiatus.

5. It is one of the cardinal principles of construction of wills that to the extent that it is legally possible effect should be given to every disposition contained in the will unless the law prevents effect being given to it - Of course, if there are two repugnant provisions conferring successive interests, if the first interest created is valid the subsequent interest cannot take effect but a court of construction will proceed to the farthest extent to avoid repugnancy, so that effect could be given as far as possible to every testamentary intention contained in the will.”

8. This Court has carefully considered the submissions raised and case law cited on behalf of the Appellant. The Court however, finds no applicability of the aforesaid decisions to the peculiar facts and circumstances of the present case. This is so because in the present Appeal, it was not the case of the Respondent/Plaintiff in the first place, that she had acquired any 'proprietary right' in the disputed premises. On the contrary, her prayer was only for protection of her right to reside in that portion of the Building, for which, the Testator had specifically provided that his married daughters 'could reside' therein. That the Plaintiff/Respondent had been married in 1986 and had subsequently shifted to the disputed first floor of the Building during the life time of Testator (deceased) Mohan Singh is not a disputed fact. In the circumstances, her status while so residing on the first floor since the life

time of her father/Testator could not have been anything other than that of a 'licensee'. Consequently even after the death of her parents, when she continued to reside therein with her family members, and admittedly without having any independent proprietary right in the said Building, still her status of being a licensee therein firstly under her father, and after his death, under her mother and thereafter under her brother defendant Piara Singh (deceased) could not have been altered in any manner. Thus, by no stretch of imagination, the Plaintiff/Respondent, who had started to reside as a 'permissive possessor' in the disputed property since her father's life time, can be treated as having 'trespassed' in the said property at any stage. She was therefore, entitled to have her forcible dispossession from the said property to be prevented even as against the true owner i.e. her brother Piara Singh, who otherwise had acquired the ownership right by virtue of his father's Will dated 30.6.1992, since there was no dispute qua the legitimacy of her possession as a 'Licensee/Permissive possessor'. Both the Ld. Courts below thus clearly committed no error in holding that the Plaintiff/Respondent could not be dispossessed from the disputed property 'except in due course of law' and an injunction to this effect was therefore, entirely correct and proper in the given circumstances.

9. No grounds are therefore, made out to interfere in the impugned Judgments of both the Ld. Courts below, whereby the Defendant/Predecessor-in-interest of the present Appellant, who had undoubtedly acquired ownership of the disputed Building, was restrained from interfering in the legitimate permissive possession of the Plaintiff/Respondent or from forcibly dispossessing or evicting her and her family members or from demolishing the Building in any manner.

10. The Appeal is thus disposed off with the clarification that the order of injunction passed in favour of the Respondent is designed to protect her from being dispossessed or evicted or interfered in her possession in the disputed premises by way of its demolition, or in any other manner by the Defendant/Respondent, 'except by due process of law'.

(SUDIP AHLUWALIA)
JUDGE

May 16, 2019
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| 1. Whether speaking/reasoned ? | Yes/No |
| 2. Whether reportable ? | Yes/No |