

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

**RSA No.3803 of 2016 (O&M)
Date of Decision.18.01.2019**

Manohar Lal

...Appellant

Vs

Municipal Council, Khanna and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Gagan Gupta Advocate
for the appellant.

-:-

AMIT RAWAL J. (ORAL)

The present appeal is directed against the concurrent finding of fact whereby the suit of the appellant-plaintiff claiming declaration of having acquired co-ownership in joint possession to the extent of 1/5th share in the shop No.67 bearing No.M.C. No.B-XII/290 situated at Chandla Market, Khanna and consequently, the sale deed dated 12.02.1997 executed by defendant No.1, Municipal Council, Khanna in favour of Surinder Kumar to be illegal and erroneous.

It was alleged that Wazir Chand, father of the plaintiff was having a wooden kiosk at G.T. Road, Khanna wherein he was carrying on business of karyana in the year 1972. Owing to the relocation as resolution passed by the Municipal Council, he was relocated and allotted the land whereby shop was constructed and business was carried on. At the back of the other co-owner i.e. the plaintiff, Municipal Council erroneously executed sale deed dated 12.02.1997 in favour of brother of the plaintiff, Surinder Kumar (since deceased) now being represented by legal representatives.

Since the plaintiff was not keeping well and had been undergoing

treatment, could not assail the aforementioned sale deed but ultimately suit was filed in 2005. The alleged Will of Wazir Chand was also illegal and fabricated.

The defendant-Municipal Council, Khanna opposed the suit and supported the sale deed to have been executed on the basis of the registered Will of Wazir Chand whereas other defendants supported the sale deed by relying upon the Will to have been witnessed by witnesses and written by deed writer, Ramesh Kumar Modi, DW4.

The plaintiff in support of aforementioned pleadings examined himself as PW1 and brought on record Ex.P1 notice and registered envelope Ex.P2 to P5, prescription slip, discharge card, medical record as Ex.P6 to Ex.P13 and receipt Ex.P14 to P24, extract from TS-I form as Ex.P25 whereas defendants brought on record sale deed and proved the Will through testimony of DW3 Nishan Singh and DW4 Ramesh Kumar Modi and extract of the register of deed writer Ex.D4.

Mr. Gagan Gupta, learned counsel appearing on behalf of the appellant-plaintiff in support of the grounds of memorandum of appeal raised following submissions:-

- (i) Defendant No.3 Reeta Rani widow of Surinder Singh in cross-examination admitted that she along with Surinder Singh was present at the time of execution and registration of the Will. Active participation of the beneficiary of the Will is one of the strong suspicious circumstance for discarding the Will.

(ii) Contradictory stands are acquisition of ownership on the basis of Will and thereafter, sale deed, thus, there was no occasion for executing sale deed once there was already Will.

(iii) No reasons have been assigned in the Will for not taking care of interest of the plaintiff, being the other son.

(iv) Both the Courts below have not looked into cross-examination of Reeta Rani and other material, therefore, there is abdication and present appeal requires determination of substantial questions of law.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit. No doubt allotment in favour of Wazir Chand was not denied in the written statement filed by the Municipal Council but it was admitted that Wazir Chand executed a registered Will dated 04.03.1987 in favour of Surinder Kumar, who became exclusive owner in possession of the entire property. Wazir Chand used to remain ill and left the work in 1990 and Surinder Kumar was running business in kiosk at G.T. Road, Khanna. With the removal of kiosk, Surinder Kumar was settled in market known as Chandla Market, Khanna, which was earlier a pond and owners of the said kiosks filled the pond and raised construction of the portion provided to them. Surinder Kumar had been running business with his father Wazir Chand on the portion provided to them. Since these persons were not lawful owners, local government granted permission to make out a scheme and sell the shops to their occupants. In this regard, a resolution in the year 1997

was passed. Surinder Kumar purchased the shop in question by paying ₹80,000/- vide receipt No.44/98 and was in exclusive ownership.

DW3 Nishan Singh deposed that Wazir Chand had appended his signature and thumb impression on the Will. After admitting contents of the Will, it was entered into register by the deed writer and produced before the Sub Registrar for registration and so was the statement of Ramesh Kumar Modi. In such circumstances, there was compliance of Section 63(c) of the Indian Succession Act and Section 68 of the Indian Evidence Act. Production of some receipts and extract would not establish that plaintiff was also taking care of the plot along with Wazir Chand and had raised construction, for, the specific pleadings have not been controverted through documentary and cogent evidence. Signatures or thumb impression on the Will have not been belied through any assistance or aid of the expert, much less, the forensic science. Even the payment of ₹80,000/- was made by Surinder Singh.

In view of aforementioned circumstances, I do not find any illegality and perversity in the judgments and decrees rendered by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal stands dismissed.

(AMIT RAWAL)
JUDGE

January 18, 2019
Pankaj*

Whether Reasoned/Speaking	Yes
Whether Reportable	No