

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

RSA-2599-2015(O&M)

Date of decision:-18.9.2019

Gobind Ram(since deceased) through his LRs

...Appellants

Versus

Shanti Devi and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.A.K. Goel, Advocate
for the appellants

Mr.Dinesh Arora, Advocate
for respondent No.1.

H.S. MADAAN, J.

Briefly summed up, the facts of the case are that plaintiff Gobind Ram aged about 68 years son of Smt.Durgi Devi wife of Sh.Sant Lal, resident of Gali Ghosian, Pana Narsan, Halu Bazar, Bhiwani had brought a suit against the defendants Shanti Devi and Indro Devi, both daughters of Kishori, resident of Bhiwani, seeking a decree for permanent injunction restraining the defendants from alienating 1/3rd portion of the house in question shown in red colour

marked with letters ABCD forming part of house marked by letters AGFH bearing MC Unit No.C-333 situated at Gali Ghosian, Pana Narshan, Halu Bazar, Tehsil & District Bhiwani.

As per the version of the plaintiff house in dispute shown with letters AGFH in the site plan annexed with the plaint was owned and possessed by three owners namely S/Sh.Munna Lal, Kishori Lal and Baijnath Kedia; all three of them had mutually partitioned the house, resultantly portion shown by letters ABCD fell to the share of Baijnath Kedia, whereas portion shown by letters BCEH fell to the share of Kishori Lal and portion shown shown by letters DGFE fell to the share of Munna Lal; all the three portions have different entrances, though in the municipal record the entire house has been shown by one Municipal unit No.C-333; Baijnath Kedia had executed a Will in the year 1938 bequeathing his entire estate including the disputed house in favour of Durgi Devi; after death of Baijnath Kedia, Durgi Devi inherited the house/portion; Durgi Devi had three sons i.e. plaintiff Gobind Ram, Shyam Lal and Piare Lal; Gobind Ram is looking after the portion of the house in question for himself and and his brothers; all three of them were exclusive owners in possession of the portion of the house shown in red colour marked with letters ABCD after death of Durgi Devi for last 12 years; Kishori Lal had two daughters, namely, Shanti Devi and Indro Devi, who are defendants in the suit; that after death of Kishori Lal,

his two daughters aforesaid became owners in possession of the portion of the house depicted with letters BCEH; the defendants taking advantage of the fact that the entire house has been allotted one municipal No.C-333 intended to sell the entire house including the portion of the plaintiff, not listening to request of the plaintiff to desist from doing so, as such the plaintiff brought the suit in question.

On being put to notice, the defendants appeared and filed written statement taking various preliminary objections contending that the plaintiff did not have any locus standi to bring the suit; that no cause of action arose to the plaintiff to bring the suit; that the suit was not maintainable in the present form and was liable to be dismissed with special costs under Section 35-A CPC; that the plaintiff was estopped by his own act and conduct from filing the suit. On merits, the defendants denied the assertions in the plaint contending that Baijnath Kedia had no concern with the house in dispute and the plaintiff was not in possession of any part thereof; that in the municipal record, the house was shown in the name of Shanti Devi – defendant No.1; that defendant No.2 – Indro Devi has already given her share to defendant No.1 – Shanti Devi; that the plaintiff or his predecessor-in-interest had/has no concern with the house in question; similarly Baijnath Kedia has nothing to do with such house, as such there was no question of his executing any Will

in favour of Durgi Devi in the year 1938; as a matter of fact the suit property was owned and possessed by one Sanwal Ram, who was having two sons, namely, Munna Lal and Kishori Lal; after death of Sanwal Ram, the suit property devolved upon Munna Lal and Kishori Lal; Munna Lal has given his share to Kishori Lal; after the death of Kishori Lal, the suit property devolved upon the defendants. Refuting the remaining assertions in the plaint, the defendants prayed for dismissal of the suit.

The plaintiff had filed replication controverting the allegations in the written statement whereas reiterating the averments in the plaint.

On the pleadings of the parties, following issues were framed:

1. Whether the plaintiff is entitled to a decree of permanent injunction as prayed for in the plaint? OPP.
2. Whether the suit of the plaintiff is not maintainable in the present form? OPD.
3. Whether the plaintiff has no cause of action or locus standi to file the present suit? OPD.
4. Whether the plaintiff is estopped by his own act and conduct from filing the present suit? OPD.
5. Relief.

In order to prove his case, the plaintiff had got his

statement recorded as PW2 and he had further examined Sh.Piare Lal as PW1, Sh.Kanwar Pal Singh as PW3 besides tendering certain documents.

On the other hand, the defendant No.1 Shanti Devi got her statement recorded as DW1 and the defendants had further examined Sh.Amir Chand Taneja as DW2 and Smt.Laxmi Devi as DW3.

After hearing learned counsel for the parties, the trial Court decided issue No.1 in favour of plaintiff, issues No.2 to 4 against the defendants. Resultantly suit of the plaintiff was decreed and the defendants were restrained from alienating 1/3rd share in the suit property marked by letters ABCD in the site plan.

Feeling aggrieved by the said judgment and decree, the defendants had filed an appeal in the Court of District Judge, Bhiwani, which was assigned to Additional District Judge, Bhiwani, who vide judgment and decree dated 28.10.2014 accepted the appeal and set aside the judgment and decree passed by the trial Court and dismissed the suit of the plaintiff.

Now it was the turn of the plaintiff to feel dissatisfied with the judgment and decree passed by Additional District Judge, Bhiwani and he has knocked at the door of this Court by way of filing regular second appeal praying that the same be accepted, the impugned judgment and decree passed by Additional District Judge,

Bhiwani be set aside and the suit filed by them be decreed.

On getting notice of regular second appeal, the respondent No.1 has appeared before this Court through counsel.

It is pertinent to mention here that during pendency of the appeal, appellant/plaintiff Gobind Ram had expired and his LRs were brought on record.

I have heard learned counsel for the parties besides going through the record.

A perusal of the judgment passed by the trial Court goes to show that it had decreed the suit basically for the following reasons:

- (i) that plaintiff is supporting his claim of title on the basis of a Will allegedly executed in favour of Durgi Devi, mother of the plaintiff by one Baijnath Kedia and rent agreement of year 1946 and 1953, whereas defendants are basing their claim relying upon entries in assessment register of municipal committee as well as electricity bills but none of those documents was a document of title, as such both the parties were sailing in the same boat qua the question of title, however, the Will having been executed in the year 1937 carries presumption of correctness in view of Section 90 of the Indian

Evidence Act and the boundaries of the property as shown in the site plan Ex.P1 completely tally with the boundaries as given in the Will;

(ii)that as Will Ex.P3 is produced from proper custody and was a 80 years old document that too when there was neither actual nor prospective dispute, as such the Will goes a long way to show that said Baijnath Kedia was owner in possession of the disputed property, though in the strict sense, the will is not the proof of title of Baijnath Kedia; similarly, rent agreement Ex.P4 is of the year 1946 and another rent agreement is of the year 1953 when there was not any actual or prospective dispute qua the title or possession etc., therefore, these documents also speak a lot in favour of the plaintiff to the effect that said Baijnath Kedia was owner in possession of the property;

(iii)that site plan got prepared by defendants Ex.D37 reflects that the house is constructed in such a manner as if the same was used by different owners inasmuch it has two kitchens and two courtyards as admitted by DW1 in her cross examination that there was a wall partitioning the disputed property

and if the property is owned and possessed by Kishori Lal only as per the case of the defendants, then there would not have been any partition and separation in the disputed property because as per case of the defendants brother of Kishori Lal had already given his share in the property to him;

(iv)that partition wall shows that 1/3rd area was separated from the house which is shown in red colour marked by letters ABCD, thus it transpired that suit property was partitioned and the same was enjoyed by the predecessor-in-interest of defendants and predecessor-in-interest of plaintiff i.e. Baijnath Kedia;

(v)that a perusal of assessment register copies Ex.D1 and Ex.D2 shows that Munna Lal son of Kishori Lal is owner in possession of the Municipal Unit No.C-333 measuring 113 square yards, however site plan Ex.D37 of defendants reflects the area of property to be not less than 170 yards and if Munna Lal was owner in possession of the whole property then in municipal record the area would have been mentioned as 170 yards and not 113 square yards, therefore even assessment register supports the

claim of the plaintiff that the plaintiff is owner to the extent of 1/3rd share where the defendants are owner in possession of 2/3rd share. As such plaintiff was found to be owner in possession of the suit property.

However, learned Additional District Judge, Bhiwani in his judgment disagreed with the findings recorded by the trial Court. The relevant discussion is contained in para No.13 of the judgment, which for ready reference is reproduced as under:

13. First of all, plaintiff is required to prove that what was the connection of said Baijnath with the suit property and what was the relation between Bannath, Kishori Lal and Munna Lal. A perusal of the file reveals that plaintiff has not produced any cogent and convincing evidence to connect all these persons. Baijnath is not related to Kishori and Munna Lal. In the entire evidence of plaintiff plaintiff nowhere mentioned about the relationship of Kishori Lal, Munna Lal with Baijnath. In the pleadings plaintiff claimed that the house in dispute was mutually partitioned but there is no evidence whatsoever available on the file to prove the partition. The case of plaintiff-respondent is based upon the Will executed by Baijnath in favour of Durgi Devi and Will is not a document of title in favour of Baijnath. Admittedly, there is no proof

regarding ownership of the suit property on the file in favour of Baijnath. Plaintiff is heavily relied upon the Will executed by Baijnath in favour of Durgi Devi but this document is not sufficient to prove the ownership of Baijnath. Even otherwise, Will is also not proved on the file. Learned trial court has also heavily relied upon the Will Ex.P-3 by saying that Will Ex. P-3 was executed on 19th April, 1937 and at that time there was no dispute, therefore, the Will is seems to be genuine. But in the considered opinion of this court, plaintiff must prove his own case by producing cogent and convincing evidence. Plaintiff in his oral evidence has examined one Pyare Lal, who during cross examination has admitted that Munna Lal, Kishori Lal and Baijnath were not related to each other. He also admitted that the possession of share of plaintiff is with Shanti Devi which was given to them during the lifetime of Kishori Lal and Munna Lal. PW-2 Gobind Ram, who is brother of plaintiff, also admitted that he, Shyam Lal, Pyare Lal are residing and Delhi and Punjab. He has taken a stand in his cross examination that Baijnath had purchased the house in dispute by registry but plaintiff has not produced said registry of the house in dispute. On the other hand, defendants to prove their possession have relied upon the electricity bills and house tax assessment record of the house Unit No. C-333. As per

house tax assessment record, the suit property is in the name of Shanti Devi till today. There is no mention about the name of Baijnath in any revenue record. The alleged Will is also not reflected in any record. Had there been any Will executed in the year 1938 in favour of Durgi Devi, then certainly her name must be mentioned in the official record or other record, but there is no evidence on the file to prove that property bearing Municipal No.C-333 was ever in the name of Durgi Devi. Plaintiff is claiming that defendants be restrained from alienating the suit property but first they were required to prove their connection with the suit property. By producing Will Ex.P-3 it cannot be conclusively held that plaintiff has 1/3rd share in the suit property.

The reasoning given by learned Additional District Judge, Bhiwani is much more plausible and convincing than the reasons put forward by the trial Court for decreeing the suit of the plaintiff.

Permanent injunction dealt with by Section 38 of the Specific Relief Act is a discretionary equitable relief, which is to be granted by the Court keeping in view the facts and circumstances of the case including the conduct of the parties and no person can claim this relief as a matter of right. For being successful, the plaintiff was required to establish by producing cogent and convincing evidence

that he is co-owner of the suit property along with the defendants. The plaintiff has failed to prove his title to the house in dispute. The relevant finding recorded by the trial Court that his title to the house is there which is derived from his mother Durgi Devi, who had in turn acquired it from Baijnath Kedia by testamentary succession. There is no document to show ownership of Baijnath Kedia qua the portion of house in question, as such he could not have transferred a valid title to Durgi Devi and after death of Durgi Devi, her sons including plaintiff Gobind Ram could not have possibly acquired any ownership right in the house or in any portion thereof. Unless will is proved by examining at least one attesting witness, its due execution is not taken to be proved. Merely because the will is more than 30 years old, its execution does not get proved and it cannot be taken to be a genuine document. For the similar reasons, the rent agreement could not be accepted as a document of title in favour of plaintiff/his predecessor-in-interest. The judgment passed by the trial Court is based upon assumptions and presumptions as well as conjectures. The judgment granting relief of permanent injunction to the plaintiff is certainly not sustainable, whereas judgment passed by Additional District Judge, Bhiwani is well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein, which might have called for interference by this Court by way of accepting the regular

second appeal.

No substantial question of law arises in this appeal.

Therefore, I do not find any merit in the present appeal and do not see any reason to disturb the legal, valid and well reasoned judgment passed by the Additional District Judge, Bhiwani.

The appeal stands dismissed accordingly.

18.9.2019

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No