

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

R.S.A. No. 5488-2019

Date of Decision : 02.12.2019

Dinesh Kumar Sharma..... Appellant

VERSUS

Anand Biyani..... Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

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Present: Mr. S.S.Mor, Advocate
for the appellant.

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MANJARI NEHRU KAUL, J.

This is a Regular Second Appeal against the concurrent findings recorded by the Courts below. The judgment and decree of the Civil Judge (Jr. Divn.) Sirsa, dated 20.07.2017 was upheld by the learned Appellate Court vide judgment and decree dated 30.07.2019.

The plaintiff-appellant had instituted a civil suit seeking relief of declaration as well as permanent injunction in his favour and against the defendant-respondent in respect of the suit property which is alleged as Sh. Radha Krishan Temple situated in Gali Sandshala School Wali, Sirsa. The said relief of declaration was sought to the effect that the plaintiff-appellant being successor of one Kewal Ram son of Sh. Kumbha Ram, R/o Gali Sandshala School Wali, Sirsa, was entitled to work as a Priest of the aforesaid Temple (hereinafter referred to as the 'suit property'). A relief was also sought for permanent injunction to restrain the respondent-defendant

from interfering in the affairs of the management of the suit property.

The plaintiff-appellant was required to prove some legal right which may have been created in favour of the predecessor in interest by a competent person. However, it transpires that he failed to prove on record that one Chandrawali was the owner of the suit property and further failed to prove on record by way of any cogent much less reliable evidence that the suit property had been entrusted in favour of Rakha Ram i.e. executor of the Will. Hence, any Will which may have been executed in favour of Kewal Ram S/o Kumbha Ram could not have been considered to be a valid document to create any legal right in favour of Kewal Ram in the absence of any thing on record to prove the competence of Rakha Ram to execute the alleged Will. Moreover, in the alleged Will no particular description of the suit property has been disclosed inasmuch as the plaintiff-appellant failed to discharge his onus by not placing on record any rough site-plan of the suit property which was obligatory on him for substantiating the identity of the suit property. The Will in question too has not been proved in accordance with law. Not only this, the plaintiff-appellant failed to establish that the electricity bills placed on record pertained to the suit property. It is the admitted case of PW1 i.e. the plaintiff-claimant that he was not in possession of any record qua the ownership of Unit No. 574 which was in the name of Chandrawali and he had no record whatsoever to show that the suit property was situated in that unit. The copy of the Will placed on record as Ex.P12/T also does not mention anywhere that the Temple in question was situated in Gali Sandshala School Wali, Sirsa, as no specific name and location is depicted in the Will. Hence, the plaintiff-claimant was unable to prove that he had an inheritable right in his favour in respect of the suit property. Moreover it is the admitted case of the plaintiff-claimant himself

that prior to the death of his brother Mahesh Kumar the vacant possession of the Temple had been handed over to the defendant-respondent.

In view of the above, no ground is made out to interfere in the impugned judgment and decree dated 30.07.2019 passed by the Additional District Judge, Sirsa.

The appeal is dismissed.

**(MANJARI NEHRU KAUL)
JUDGE**

02.12.2019

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Whether speaking/reasoned
Whether Reportable:

Yes / No
Yes / No