

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.561 of 2016 (O&M)

Date of Decision: May 16, 2019

Om Parkash Malhotra (deceased) through L.Rs

...Appellant

Versus

Ram Murti Malhotra & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Puneet Sharma, Advocate,
for the appellant.

AMIT RAWAL, J. (Oral)

Appellant-defendant is in Regular Second Appeal against the concurrent findings of fact, whereby the claim of the respondent-plaintiff in respect of property ACDE has been accepted and a preliminary decree qua partition by separate possession has been passed.

Plaintiff alleged that property ABCD & E was joint holding of Ram Dass Malhotra. They did not retain the joint possession. That property was self-acquired and by virtue of the Will dated 21.10.1940 Ex.D1/A, all the properties except "E" have been given in equal distribution to all the three sons, but "E" was his exclusive ownership.

Both the parties led evidence.

Mr. Puneet Sharma, learned counsel for the appellant-defendant submitted that the courts below have discarded the Will by ignoring the fact that Bhagat Ram Sehgal scribe of the Will had died and his son DW-1 Raj Kishan was examined, who proved his signatures and Dwarka Dass son of the attesting witness Lala Billa Mal was examined as DW-2. The decree is only confined to property ABCD and E, which has been held to be self-

acquired property. Lower Appellate Court erred in ignoring the fact that the Will dated 21.10.1940 was initially admitted by defendant No.2, i.e. Gian Chand Malhotra, but it was only after his death, the legal representatives took a u-turn. The courts below were swayed away with the contents of the letter as it was as per the prevailing circumstances. The property had been already in exclusive possession of the appellant and, therefore, there was a implied partition as per the wish of the testator and, thus, urged this Court for setting aside the findings under challenge.

I have heard the learned counsel for the appellant-defendant, appraised the paper book and of the view that the revenue record or the record of rights revealed the jointness amongst all the three siblings after demise of Ram Dass Malhotra. The Will is unregistered document and was allegedly discovered in 1979. No effort was made to get the name corrected in the revenue record, whereas the suit was filed in 1992 and decided in 2005. Neither any expert to prove the signatures of Ram Dass Malhotra was examined. In such circumstances, the finding with regard to discarding of Will is the correct one. The question of possession can always be seen at the time of drawing the final decree.

For the reasons aforementioned, I do not find any illegality or perversity in the findings under challenge. No ground for interference is made out, much less involvement of any Substantial Question of Law. Resultantly, the appeal is dismissed on merits as well as on limitation.

May 16, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No