

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

**RSA No.4318 of 2015 (O&M)
Date of decision:30.01.2019**

Parveen Kumar

... Appellant(s)

Vs.

Phoolwati and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Arundeeep, Advocate for
Mr. R.S.Pandher, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.10410-C of 2015

For the reasons stated in the application which is duly supported by an affidavit, delay of 25 days in re-filing the appeal is condoned.

C.M. stands allowed.

RSA No.4318 of 2015 (O&M)

Appellant-defendant no.1 has not been successful in defending the suit preferred by plaintiff-respondent no.1, who is none-else but mother being widow was constrained to approach the Court claiming declaration of ownership and injunction.

It was pleaded that plaintiff alongwith her husband Kumar Bhanu Shastri, were allotted residential plot bearing no.1692 measuring 10 marlas in Sector 13 Urban Estate Karnal in equal share for a consideration

of Rs.10,175/-vide allotment deed dated 1.3.1974. In the year 1975, it was renumbered as 1857. Kumar Bhanu Shastri died on 26.2.1994. It was further alleged that portion under the exclusive possession of the plaintiff consisted drawing room, bed room, one store and kitchen shown in yellow colour, front and rear court yard and covered passage window bathroom and W.C on the ground floor whereas defendants no.1 and 2 were also residing in the respective portion.

Defendant no.1 instituted the suit for injunction against the plaintiff which was pending adjudication and had propounded the un-registered Will dated 12.02.1994 and intended to dispossess the plaintiff. The Will was false and bogus and sought the declaration in terms of the allotment letter. It was also alleged that her husband Kumar Bhanu Shastri had been insisting that he would transfer the whole property in favour of the plaintiff so that she should not suffer from any finance and other constraints.

Defendant no.1 opposed the suit and stated that it was a benami transaction. In fact, the entire house was owned by Kumar Bhanu Shastri.

Learned counsel appearing on behalf of the appellant-defendant no.1 submitted that the defendants have examined following witnesses:-

DW1-	Parkash Chand, Clerk from the office of HUDA
DW2-	Ram Bhagat
DW3-	Subhash Khurand, Deed Writer
DW4-	Parveen Kumar
DW5	Ramesh Mittal, Advocate
DW6	Neelam Sharma

DW7 Ramesh Kumar

Once the Will had already been proved on record through the testimony of the attesting witnesses and deed writer and as per the assertion of the plaintiff, construction was done by defendant no.2, the allotment could not have been said to be exclusive in the name of Kumar Bhanu Shastri and plaintiff as her name was reflected only due to love and affection. In such circumstances, Kumar Bhanu Shastri bequeathed the entire property in favour of appellant-defendant no.1. The testator gave a clear reasoning in the Will to disinherit the daughter Neelam as her share was taken care of at the time of marriage. There was compromise in the Panchayat Biradari on 07.01.2001. The Will, Ex.DW2/A conferred the ownership in favour of appellant-defendant no.1.

I have heard the learned counsel for the appellant-defendant no.1, appraised the judgments and decrees of the Courts below and of the view that there is no force and merit in the submissions of Mr.Arundeeep, for, allotment proved on record established that it was joint letter in the name of Kumar Bhanu Shastri and plaintiff. On perusal of the Will placed on record Annexure A-3 and its vernacular, it is deciphered that Will has been prepared by making attempt to adjust the signatures on the blank papers. The tenor and mode of drafting of the Will on first and second page is clearly different which is evident from the spaces. It is not a case where the Will has been written by deceased, testator himself, but by deed writer. The appellant-defendant no.1 has not been able to prove the transaction to be benami. In such circumstance, Kumar Bhanu Shastri could not have

bequeathed the entire property in favour of appellant-defendant no.1 and his ½ share would definitely devolve upon all the legal heirs in accordance with law but not in the manner and mode as indicated above.

The judgments and decrees of the Courts below, in my view, cannot be said to suffering from illegality and perversity.

Resultantly, the regular second appeal is dismissed.

January 30, 2019

savita

Whether Speaking/Reasoned

Whether Reportable

(AMIT RAWAL)

JUDGE

Yes/No

Yes/No