

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

**RSA No.304 of 2017 (O&M)
Date of Decision.26.02.2019**

Krishan Lal

...Appellant

Vs

Satish Kumar and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Parminder Singh Kanwar, Advocate for
Mr. Padamkant Dwivedi, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

The appellant-plaintiff has not been successful in ascertaining exclusive ownership over the suit property bearing Nos.B-III-43 situated at Ghati Balmiki Ludhaina and B-III-793/1 situated at Ghati Ram Dassian Ludhiana, possession of one room and kitchen marked as A as shown in the site plan out of property, B-TI-43 situated at Ghati Balmiki, Ludhiana and for possession of one room, store, kitchen on ground floor from defendant No.2 to 4 of property No.B-III-43 situated at Ghati Balmiki Ludhiana and also by restraining the defendants from interfering into peaceful possession of the plaintiff.

It was alleged that Dass Ram father of the plaintiff executed a Will dated 18.08.1998 bequeathing entire property in favour of the plaintiff. He died on 2.1.1999. The suit property was mutated in the name of the siblings and the mother by way of natural succession. Plaintiff instituted the suit which was dismissed in default by invoking the provision of Order 9 Rule 8 CPC, thus, was

not precluded to file fresh suit. It was also alleged that property bearing No.B-III-43 was in the ownership of the father of the plaintiff but later on was purchased in the name of mother of the plaintiff, defendant No.3 vide sale deed dated 8.6.1988 and since then had been in possession and claimed ownership on the basis of adverse possession as well.

Defendants opposed the suit and stated that Dass Ram executed a Will dated 6.1.1976 in favour of his wife Laxmi Devi, defendant No.3.

Learned counsel appearing on behalf of the appellant submitted that the Courts below have abdicated in non-suiting the plaintiff on account of non-examination of witnesses of the Will. Plaintiff had been in possession of the suit property bearing No.B-III-43 since long and therefore, ownership should have been granted on the basis of adverse possession.

I am afraid aforementioned argument is not sustainable, for, claiming right of ownership on the basis of adverse possession by the plaintiff is an estoppel, in view of the ratio decidendi culled out by Hon'ble Supreme Court in **Gurudwara Sahib v. Gram Panchayat Village Sirthala and another 2013 (4) R.C.R. (Civil) 703.**

As regards benami transaction, plaintiff had not been able to establish ingredients of Benami Act, particularly provisions of Section 4 of the Benami Transactions (Prohibition) Act, 1988. It is a matter of record that after the demise of father, entire properties were mutated in the name of all the siblings and wife by way of natural succession. It is an attempt of greed to usurp the property without

proving the Will.

The appeal is also accompanied by an application seeking condonation of delay of 230 days in refileing of the appeal. The explanation given in the application is bereft of reasonable cause and bona fide.

In view of the aforementioned circumstances, I do not find any illegality and perversity in the concurrent finding of fact and law 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 is dismissed both on the ground of delay as well as on merit.

(AMIT RAWAL)
JUDGE

February 26, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No