

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

Date of decision: 01.04.2019

1. RSA No.3005 of 2018 (O&M)

Balwinder Singh

..... Appellant

Versus

Talwinder Singh and another

..... Respondents

2. RSA No.4057 of 2018 (O&M)

Balwinder Singh

..... Appellant

Versus

Talwinder Singh

..... Respondent

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. R.K. Dogra, Advocate  
for the appellant (in both appeals).

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**ANIL KSHETARPAL, J. (ORAL)**

**CM-10724-C-2018 in RSA-4057-2018**

Application is allowed and the delay is condoned.

**Main Cases**

Vide this judgment, RSA No.3005 of 2018 and RSA No.4057 of 2018 shall stand disposed of as both the appeals are inter-connected.

Defendant No.1-appellant is in the regular second appeal against the concurrent finding of fact arrived at by the Courts below granting a decree for declaration that the plaintiff is owner of house No.2195/2 MIG(L), Sector 45-C, Chandigarh on the basis of oral family settlement followed by

General Power of Attorney and a registered Will in favour of the plaintiff, all executed by defendant No.1. It will be noted that the plaintiff and defendant No.1 are brothers. Defendant No.1 applied for allotment of a flat and in the draw of lot, he was successful. In the meantime, wife of defendant No.1 purchased another property i.e. house No.792/1, Sector 41-A, Chandigarh and thereupon an oral family settlement is alleged to have taken place wherein the house which had been allotted i.e. house No.2195/2 MIG(L), Sector 45-C, Chandigarh, papers thereof were handed over to the plaintiff and the plaintiff was acknowledged as owner of the house in question. The plaintiff deposited the entire price of the property and on allotment thereof took possession in 1988. He has been residing with the family members in the aforesaid house. Defendant No.1 initially executed a registered General Power of Attorney in favour of the plaintiff on 09.06.1988. Thereafter, he also executed a registered Will in favour of the plaintiff on 30.07.1990.

The defendant contested the suit and pleaded that the plaintiff was allowed to stay in the house being closely related. It was further pleaded that wife of defendant No.1 and the plaintiff are partners in M/s Sian and Sian, SCO No.362, Sector 44-D, Chandigarh and General Power of Attorney was executed in good faith. However, the execution of the Will was denied.

On appreciation of evidence, both the Courts have found that the oral family settlement has been proved particularly in view of General Power of Attorney as also the Will.

Learned counsel appearing for the appellant has submitted that the General Power of Attorney was only to manage the property and no ownership rights were conferred. He further submitted that the Will would operate only after the death and the Will has been revoked.

This Court has considered the submissions. As regards General

Power of Attorney, the plaintiff was duly authorized to take possession of the house and deal with the officials of the allotting authority as well as deal with all the litigation in any manner he like. He was also authorized to enter into a compromise/compound or withdraw case/litigation. Apart therefrom, he was also given power to appoint a sub-Attorney. Still further, the Will dated 30.07.1990 again a registered one which has been proved by examination of the attesting witness clearly prove that defendant No.1 had acknowledged the plaintiff to be owner of the property. It is a different matter that now the defendant-appellant has changed his mind and revoked the Will as well as Attorney. It has also been found by both the Courts below that the entire payment was paid by the plaintiff to the allotting authority. In the present case, both the Courts on appreciation of evidence have returned a finding of fact that the family settlement between the parties has been proved. The finding is on the basis of preponderance of evidence and such finding is neither proved to be perverse nor on account of misreading or non-reading of any substantive evidence.

Learned counsel for the appellant has made sincere attempt, however, keeping in view the findings of fact which are not shown to be perverse, this Court does not find any good ground to interfere.

The pending miscellaneous application, if any in both the appeals, shall stand disposed of accordingly.

Both the appeals are dismissed.

**01.04.2019**  
Dinesh Bansal

**( ANIL KSHETARPAL )**  
**JUDGE**

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No