

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

**RSA No.3076 of 2018 (O&M)
Date of Decision : 18.12.2019**

Ramesh Kumar

.....Appellant

Versus

Desh Deepak Sasan

..... Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr.SKS Bedi, Advocate for the appellant.

Mr. Akshay Jindal, Advocate for the caveator-respondent.

ARUN PALLI, J. (Oral)

Suit filed by the respondent-plaintiff was decreed by the trial Court vide judgment and decree dated 03.04.2015 and as even the appeal preferred against the said decree failed and was dismissed on 22.01.2018, he is before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

Plaintiff prayed for mandatory injunction directing the defendant to vacate the portion measuring 72 feet X 47 feet, towards South of House No.21-B, Gobind Nagar, Amabala Cantt and handover its actual physical possession to the plaintiff, besides recovery of Rs.10,000/- as mesne profit till the filing of the suit, and for further recovery of mesne profit @ Rs.8,000/-.

In brief, the case set out by the plaintiff was that late Bhupinder Krishan Sasan, who happened to be the father of the parties, died on

14.10.2008 at Ambala Cantt and, besides the parties to the *lis* was survived by two daughters. He was the absolute owner of the suit property, which he constructed after purchasing a site. The total area of the said plot was 92 feet X 47 feet. Vide a Will dated 28.09.1994, father of the plaintiff bequeathed a portion of the said property i.e. 72 feet X 47 feet in favour of plaintiff, whereas, as the remaining area measuring 20 feet X 47 feet that opened on the North side of house No.21-B, Gobind Nagar, Ambala Cantt was given to the defendant. Father of the plaintiff lived in the house in question till his last and the defendant was living with him being his son. Post death of his father, plaintiff permitted the defendant to continue to occupy the built up portion i.e. 72 feet X 47 feet as licensee. Subsequently, when the plaintiff required the defendant to vacate the said portion for that had fallen to his share by virtue of the Will, defendant had been putting off the matter on one pretext or the other. Eventually, plaintiff revoked the license through a registered notice dated 02.02.2009, but as the defendant still failed to vacate the said portion, thus the suit.

In the written statement filed by the defendant the execution of the Will dated 28.09.1994, was denied. It was maintained that alleged Will was a forged and fabricated document. However, it was admitted that House No.21B, Gobind Nagar, Ambala Cantt was constructed by their father on South of the said plot measuring 72 feet X 47 feet. It was claimed that defendant was in possession of the suit property in his own right and not as a licensee. Therefore, the suit was liable to be dismissed.

Upon consideration of the matter in issue and the evidence on record, both the Courts concurrently concluded that to prove execution and

validity of the Will (Ex.P1) plaintiff examined one of the attesting witnesses i.e. Brij Mohan Singh (PW3) who testified in his deposition that Will dated 28.09.1994, was scribed by Umesh Kumar Mittal, Advocate as instructed by the testator, late Bhupinder Krishan Sasan. And at that time even the other attesting witness of the Will namely Shanker Dass Sharma was also present. Further, the contents of the Will were read over by Umesh Mittal, Advocate whereafter it was signed by Bhupinder Krishan Sasan and also the attesting witnesses in his presence. Likewise, Umesh Mittal, Advocate (PW-2) proved the execution of the Will in his testimony. Subsequently, the Will was registered in the Office of Sub Registrar on 21.10.1994. Vikram Dutt (PW1) deposed that Will (Ex.P1) dated 28.09.1994, was registered in the Office of Sub Registrar on 21.10.1994. Thus, in the wake of the evidence on record, particularly, the testimony of the attesting witness, and the scribe of the Will, the only and the inevitable conclusion that could be reached: execution of the Will dated 28.09.1994 was duly proved. The plea that signatures of the testator on the Will were forged, for, it bears short signatures whereas the testator would write his full signatures, as affixed on the documents Ex.D5 and Ex.D6, also admitted by the plaintiff in his cross-examination. In reference to the document Ex.D4 brought on record by none other than defendant, which was a letter written by the testator to the plaintiff it was concluded that it too bears the short signatures of Bhupinder Krishan Sasan, identical to the one affixed on the Will (Ex.P1). Therefore, the version of the plaintiff that short signatures affixed on the Will as also the full signatures that appear on documents Ex.D5 and Ex.D6 were of his late father was fully corroborated. The plea that plaintiff had failed to

produce the original Will dated 28.09.1994, was equally erroneous, for, the specific case set out by the plaintiff was that original Will was in possession of the defendant which he had shown to the plaintiff post death of his father, however, the defendant denied this position in the written statement, resultantly, the plaintiff proved the execution of the Will by way of secondary evidence. The argument that testator Bhupinder Krishan Sasan had not appended his signatures before the Sub Registrar would also not advance the case of the defendant as it was hardly a factor which could be construed as suspicious circumstance. Particularly, when the scribe and the attesting witness of the Will had duly proved its execution as also that the same was executed by the testator in a sound and free disposing mind. Further, the grievance of the defendant that for, the trial Court failed to frame any issue as regards execution and validity of the Will the findings recorded in this regard were required to be reversed, lacks conviction and cannot be countenanced. Ex facie, the issue as regards execution of the Will (Ex.P1) arose out of the pleadings of the parties. It cannot be disputed either that having understood their respective claims parties led evidence to prove and to disprove the Will or that it was a forged document. The issue qua the execution and validity of the Will dated 28.09.1994, was duly deliberated upon by both the Courts with the assistance of the counsel for the parties. That being so, the plea that no specific issue as regards the Will in question was framed pales into insignificance. Further, the recitals of the Will (Ex.P1) would show that late Bhupinder Krishan Sasan had already given sufficient amount to the defendant, who was living with him all through his life, from time to time for opening the Gas Agency etc.. Thus, he chose not

to give any property to the defendant-Ramesh Kumar. Hence, both the Courts concurrently concluded that Will (Ex.P1) in question was not surrounded by any suspicious circumstance.

The defendant too had set up a Will (Ex.D7 and Ex.D8), alleged to have been executed by Bhupinder Krishan Sasan. However, an analysis thereof, would show that neither of those documents either bear any date or name and even the signature of the person who had written those. Further, nothing was brought on record to show if the defendant was in lawful possession of the suit property under any legally enforceable right. On the contrary, plaintiff having proved himself to be the absolute owner by virtue of the Will (Ex.P1), he was entitled to the decree prayed for.

On being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the conclusions arrived at were either contrary to the record or suffered from any material illegality. Thus, no ground is made out to interfere with the concurrent findings recorded by both the Courts below. The appeal being devoid of merit is accordingly dismissed.

18.12.2019

Manoj Bhutani

**(ARUN PALLI)
JUDGE**

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No