

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

**RSA No.6187 of 2017 (O&M)
Date of Decision.27.05.2019**

Surinder Pal Singh Bhatti

...Appellant

Vs

Gurjinder Singh Bhatti and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ashish Aggarwal, Senior Advocate with
Mr. Parunjeet Singh, Advocate
for the appellant.

Mr. Parminder Singh, Advocate
for the caveator/respondents.

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AMIT RAWAL J. (ORAL)

The present regular second appeal at the instance of the appellant-defendant No.1 whereby suit of the respondent No.1-plaintiff Gurinderjeet Singh Bhatti for declaration declaring him and defendant No.1 to be owner of the house in dispute in equal share i.e. half share bearing No.1715/3, Urban Estate, Karnal has been decreed and affirmed in appeal.

It was alleged that Pritam Singh, their father was common ancestor. He owned a house and had died on 18.07.1998. On his demise, survived by Gurinderjeet Singh Bhatti, plaintiff, Surinderpal Singh Bhatti, defendant No.1, defendant No.2 and 3 other sons and daughters defendants No.4 and 5 and defendant No.6 mother Amar Kaur. Defendants No.2 to 6 relinquished their share in the property in favour of plaintiff and defendant No.1 in another equal share, thus, instead of 1/7th share, they acquired half share in each in

the family settlement. Defendant No.1 resiled from the family settlement, therefore, necessity arose to file the suit.

Defendants No.2 to 5 appeared and filed written statement stating that they have no objection of suit of the plaintiff is decreed.

Defendants No.1 and 6 contested the suit and though admitted the relationship but denied any family settlement. In paragraph of the written statement, it was stated that property of deceased Pritam Singh was partitioned in 2002 and all the legal heirs received share. In such manner, plaintiff and defendant No.2 to 6 relinquished their share in the suit property in favour of defendant No.1, who had become exclusive owner of the suit property, though one room was given to the plaintiff on his request and first floor has been let out by defendant No.1.

Since the parties were at variance, the trial Court framed the following issues:-

“1. Whether the plaintiff is entitled for a decree for declaration as prayed for? OPP

2. Whether the suit of the plaintiff is not legally maintainable in its present form? OPD

3. Whether the plaintiff has got no locus standi and cause of action to file and maintain the present suit? OPD

4. Whether the suit is not properly valued for the purposes of court fee and jurisdiction? OPD

5. Whether the suit of the plaintiff is bad for mis-joinder

and non-joinder of necessary party? OPD

6. Relief.”

In support of pleadings, respondent No.1-plaintiff examined PW1 Brij Mohan, Sewadar Municipal Council, Karnal, who deposed about assessment register Ex.P1, PW2 Parkash Chander, Clerk in the office of EO, HUDA, who deposed about allotment letter Ex.P2, PW3 Chaman Singh, Notary Public, who attested affidavits Ex.P3 and P4, PW4 Shashi Kant Dutta, Notary Public who attested affidavit Ex.P5, PW5 Shashi Kant Sharma, Draftsman, PW6 Rajesh Mani, Advocate Notary Public, plaintiff himself appeared as PW7 and Ashok Kumar as PW8. On the other hand, defendant No.1 appeared as DW1, Jitender Kumar as DW2 and closed the evidence.

Mr. Ashish Aggawal, Ld. Senior Counsel assisted by Mr. Parunjeet Singh, learned counsel appearing for the appellant-defendant No.1 submitted that the plaintiff had alleged that the suit property was purchased from the income of the ancestral property. The family settlement of July, 2002 was emphatically denied. It was self-acquired property. Plaintiff is in Haryana Police and married four times. The mother had been staying with defendant No.1 though she died during the pendency of the suit. During her life time executed a registered Will dated 08.11.2005. In fact, the application for additional evidence moved before the trial Court was dismissed and met with the same fate even before lower Appellate, therefore, application for additional evidence has also been filed before this Court. DW2 proved family settlement and death of Pritam Singh in

1998. In support of aforementioned contentions, relied upon judgment of Hon'ble Supreme Court in Wadi VS. Amilal and others 2015 (1) SCC (Civil) 643 and judgments of this Court in Smt. Swaran Kanta Vs. Brij Kumar and others 1991(2) PLR 73; Som Nath Harish Chand through Harish Chander Vs. Vidya Sagar and another 2011 (4) RCR (Civil) 469 and Ram Niwas Vs. Kalu Ram and another 2012(4) RCR (Civil) 56.

Even if the Will has not been exhibited but has been proved through testimony of DW2. The tenor and mode of cross-examination leads to irresistible conclusion that the parties were aware of the execution of the Will. The cross-examination of DW2 Jitender Singh extracted in the grounds of appeal. In the absence of any contrary evidence, both the Courts below committed illegality and perversity while decreeing the suit.

I have heard learned senior counsel for the appellant, appraised the paper book and of the view that there is no force and merit. Affidavits Ex.P3 to P5 are of 24.02.2007 and 01.03.2007 and Ex.P5 revealed that parties relinquished their share in favour of the plaintiff and defendant No.1. The aforementioned documents have not been rebutted. The alleged Will had neither been pleaded nor proved on record. The factum of the family settlement has been admitted in paragraph 5 of the written statement. Defendant No.1 in cross-examination admitted that plaintiff had been residing in one of the room of the house and complaint was made by his mother against him. No complaint with regard to affidavits so far has been made. One reason was that mother had also filed a complaint. All these

factors lead to irresistible conclusion that the defendant could not prove his exclusive ownership.

In view of such circumstances, the concurrent finding of fact and law rendered by Courts below cannot be said to be suffering from illegality and perversity, 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.

(AMIT RAWAL)
JUDGE

May 27, 2019
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No