

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

RSA No. 172 of 2019 (O&M)
Date of decision: 14.1.2019

Chander Mohan Parwahk and others

...Appellants

Versus

Kamla Parhawhk and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Gaurav Sharma, Advocate,
for the appellants.

Mr. Om Pal, Advocate,
for the respondents/caveators.

JAISHREE THAKUR, J.

The defendants/appellants herein seek to challenge the judgment and decree dated 29.8.2016 passed by the Civil Judge (Junior Division), Ludhiana, whereby the suit of the plaintiffs/respondents herein was decreed and the appellants herein were directed to vacate and hand over the possession of the suit property to the plaintiffs/respondents within a period of two months with a further direction restraining them from making any addition or alteration in the suit property or transferring the possession of the same to any other person. The said judgment and decree was subsequently affirmed by the Additional District Judge, Ludhiana, vide judgment and decree dated 14.12.2018.

In brief the facts that need to be noted are that the plaintiffs/respondents came to file a suit for mandatory injunction directing

the defendants/appellants herein to vacate and hand over the possession of the house described in the head note of the plaint with a further prayer to restrain them from making any addition or alteration or transferring the same in favour of any other person. It was pleaded that the suit property was self acquired property of Dr. Chander Hans Parwahk and during his life time, he had executed a Will dated 3.10.1978 with regard to his estate, including the suit property. The said Will was registered and as per the Will his wife Kamla Parwahk—plaintiff No.1 had been given a limited right in the property and the said property was to devolve upon his daughter plaintiff No.2 also. After the death of Chander Hans Parwahk, a Probate Petition No.4 of 25.11.2005 titled Kamla Parwahk and others Versus General Public and others, was filed wherein the parties appeared and admitted the execution and registration of the Will dated 3.10.1978 and the probate was granted by the Court at Ludhiana, vide its judgment and decree dated 10.12.2007. In the suit, it was contended that the appellants approached the plaintiffs/respondents to allow them to reside in the portion of the house as licensee since their house was under construction but thereafter refused to vacate the suit property. On notice, the defendants/appellants appeared and filed a written statement taking various preliminary objections amongst other that the Will in question is a forged and fabricated document, which has been created to defeat their right in the suit property. A rejoinder was filed to the said written statement reiterating the facts pleaded in the plaint and from the pleadings of the parties the following issues were framed:-

1. Whether the plaintiff No.2 is the owner of the suit property? OPP

2. Whether the plaintiffs are entitled to relief of mandatory injunction directing the defendants to vacate and hand over the suit property? OPP
3. Whether the plaintiffs are entitled to relief of permanent injunction restraining the defendants from making any addition or alteration in the suit property? OPP
4. Whether the suit of the plaintiffs is not maintainable? OPD
5. Whether no cause of action has arisen in favour of the plaintiffs? OPD
6. Whether the plaintiffs have no locus standi to file the present suit? OPD
7. Whether the site plan is false? OPD
8. Relief.

The trial court on appreciation of the evidence came to hold that the Will propounded by the plaintiffs/respondents dated 3.10.1978 had been probated and in view of that the plaintiff/respondent No. 2 herein had become owner of the suit property. DW1 Anmol Parwahk—appellant No.3 herein did not come present for his cross-examination, so his testimony cannot be taken into consideration, having no evidentiary value. In this back ground, issues No. 1 to 3 were decided in favour of the plaintiffs/respondents and rest of the issues were decided against the defendants/appellants as the onus to prove them was on the defendants/appellants and no evidence was led by them. Resultantly, the suit was decreed in favour of the plaintiffs/respondents.

On appeal, the first Appellate Court again, on the basis of the Will and the fact that the witness did not turn up for his cross-examination, his evidence could not be read, while also taking note of the fact that the defendants/appellants herein had not led any evidence, held that the entire evidence led by the plaintiffs/respondents was unrebutted, affirmed the findings recorded by the trial court. Hence the present appeal.

Learned counsel appearing on behalf of the appellants herein seeks to challenge the aforesaid judgments and decrees passed by both the courts below.

It is argued that it is an admitted fact that the property was purchased by Dr. Chander Hans Parwahk in his name and in the name of his wife Kamla Parwahk from the Improvement Trust, Ludhiana, from his own funds. It is argued that at best Dr. Chander Hans Parwahk could have executed the Will dated 3.10.1978 with regard to his share in the suit property, however, he could not have executed any valid Will pertaining to the other half share of the suit property since the same stands in the name of his wife Kamla Parwahk. It is contended that the defendant/appellant being the legal heir is entitled to a share out of 1/2 share pertaining to his late mother—Kamla Parwahk and, therefore, the order asking the appellants to hand over the vacant possession of the suit property is not sustainable until and unless partition is done.

At this stage, learned counsel for the plaintiffs/respondents, who have filed a caveat, appears and submits that the concurrent findings of facts recorded by the courts below are based on the proper appreciation of the evidence brought on record and does not call for interference, since the

Will in question stands probated.

I have heard rival submissions of the learned counsel for the parties and have also perused the impugned judgments.

It is an admitted fact that there is a Will which was executed by Dr. Chander Hans Parwahk in favour of his wife and daughter, respondents herein. This Will was put to probate in Probate Petition No.4 of 25.11.2005 titled Kamla Parwahk and others Vs. General Public and others and in those proceedings, appellant No.1 Chander Mohan Parwahk admitted the execution of the said Will and thereafter failed to put in appearance therein. Based on the said admission, the probate was allowed holding the plaintiffs/respondents to be owners of the suit property. Therefore, the question of the Will being a forged and fabricated document does not arise. Moreover, the question whether or not Dr. Chander Hans Parwahk could have executed a Will pertaining to the share of his wife in the suit property was a question that had to be determined at the relevant time. No such objection was taken and the Will in question was acknowledged and admitted to have been duly executed. It is also pertinent to note that even in these proceedings Anmol Parwahk son of Chander Mohan Parwahk (DW1) did not come forth to subject himself to cross-examination after having tendered his affidavit in chief. Once DW1/appellant No.3 appeared in these proceedings and tendered his affidavit in chief and thereafter chose not to appear to subject himself to cross-examination, any evidence in the form of affidavit or statement could not be looked into.

Secondly, even otherwise also, no other evidence has come on the record nor witness examined to rebut the evidence led by the

plaintiffs/respondents and, therefore, the suit has rightly been decreed by the courts below. Moreover, no substantial question of law arises for determination in this case. Consequently, the Regular Second Appeal is dismissed.

At this stage, a request has been made by the learned counsel for the appellants herein for grant of three months time to vacate the suit property on the ground that appellant No.1 is not keeping good health and some time would be required to vacate the premises. The request is acceded to. The appellants herein are directed to vacate the suit property within a period of three months from today, subject to their filing an undertaking with the trial court within 15 days from the date of this order that they will hand over the vacant possession of the suit property within three months from today and will also clear the dues, if any. It is made clear that if the required undertaking is not filed within the stipulated period, the respondents herein will be at liberty to seek eviction of the appellants from the suit property forthwith.

14.1.2019
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No