

IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

RSA-6559-2018

Date of Decision: November 13, 2019

D.D. Verma

...Appellant

Versus

M/s Urban Improvement Company Private Limited

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI, JUDGE.

Present: Mr. Lalit Yadav, Advocate,
for Mr. Sandeep Sharma, Advocate,
for the appellant.

ARUN PALLI, J. (ORAL)

Suit filed by the appellant-plaintiff was dismissed by the Trial Court, vide judgment and decree, dated 06.05.2015, and as even the appeal preferred against the said decree failed, and was dismissed on 25.04.2018, he is before this Court in Regular Second Appeal. Parties to the *lis*, hereinafter shall be referred to by their original position in the suit.

Plaintiff prayed for mandatory injunction requiring the defendant to allot Plot No. NA-151 or an alternate plot of equivalent size, measuring 233 Sq.Yards be allotted in his favour.

In brief, the case set out by him was that he was grandson of late Shri Kundan Lal Verma, who purchased Plot No. 43-E Block, Green Field, from defendant, vide document No. 182, dated 06.09.1965. Kundan

Lal died issueless on 22.11.1973. Plaintiff happened to be the adopted son of Kundan Lal. In fact, he was son of the nephew of Kundan Lal Verma. Late Kundan Lal executed a Will, dated 17.11.1972, in favour of the plaintiff, vide which he bequeathed Plot No. 43-E Block, Green Field, in his favour. Plaintiff was oblivious of the said Will and got to know that Kundan Lal had executed a Will, on 19.09.2005, after he met one of the attesting witnesses, namely, Maman Singh. Post death of Kundan Lal, plaintiff became owner of the said plot. He never received any notice as regards acquisition of Plot No. 43-E Block. On inquiries plaintiff was assured by the defendant that owing to certain internal activities of the company, it would take some time for the defendant to deliver possession of the said plot to the plaintiff. Subsequently, vide communication dated 21.10.2005, defendant informed plaintiff that said plot had already been acquired by Railways and in lieu of Plot No. 43-E Block, Plot No. NA-151 was allotted to Kundan Lal Verma. However, owing to non-fulfilment of terms and conditions of allotment, the same was cancelled. Plaintiff filed a complaint against the defendant before District Consumer Forum alleging deficiency in service. However, vide order dated 15.09.2010, the National Consumer Redressal Forum granted liberty to the plaintiff to seek appropriate relief before Civil Court. Thus, the suit.

In the written statement filed by the defendant it was pleaded, *inter alia*, that alleged Will, dated 17.11.1972, was a forged and fabricated document, for, signatures of late Kundan Lal Verma on the said Will did not tally with his signatures on the record available with the defendant

Company. It was admitted that Plot No. 43-E was sold to Kundan Lal Verma, vide sale deed, dated 16.09.1965, and he was delivered possession. However, it was acquired by Government of Haryana, thus, he or his heirs could receive compensation from the Land Acquisition Authority. Still, as a gesture of goodwill, defendant company offered another Plot No. NA-151 to Kundan Lal Verma, but despite repeated requests, he failed to deposit the requisite amount, resulting in cancellation of allotment. Thus, 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 plaintiff propounded a Will alleged to have been executed by Kundan Lal Verma, vide which the suit property was bequeathed in his favour, however, he failed to prove the said Will in terms of the provisions of Section 68 of the Indian Evidence Act. Further, the question: whether defendant Company offered another Plot No. NA-151 to Kundan Lal Verma was still secondary as the primary issue between the parties was – if plaintiff was even entitled to inherit the estate of the deceased?

Ex facie, plaintiff claimed himself to be grandson of Kundan Lal Verma, whereas in his affidavit he had pleaded that Kundan Lal Verma solemnized two marriages, but he died issueless. Nothing was brought on record either to prove the relationship between the two. Not just that he even claimed to be the adopted son of late Kundan Lal, but failed to produce on record copy of the adoption deed or any evidence in this regard. Even if the alleged adoption was oral in nature, yet he was required to

adduce evidence to substantiate his claim. On the contrary, evidence led by the defendant proved that Kundan Lal was even offered another Plot No. NA-151, but he failed to comply with the terms and conditions of allotment, resulting in cancellation of proposed allotment. No contract came into existence between the parties and the defendant sold the said plot to a third party.

Thus, in the wake of the above, the only and the inevitable conclusion that could be reached: the suit was liable to be dismissed.

On being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the conclusions concurrently arrived at were either contrary to the record or suffered from any material illegality. No ground is made out to interfere with the concurrent findings recorded by both the Courts.

The appeal being devoid of merit is accordingly dismissed.

(ARUN PALLI)
JUDGE

November 13, 2019

Pk Kapoor

Whether Speaking/Reasoned: YES / NO

Whether Reportable: YES / NO