

RSA No. 1910 of 2018 (O&M)

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

**RSA No. 1910 of 2018 (O&M)
Date of decision: 15.11.2019**

Kuldeep Singh

... Appellant

Versus

Darshan Singh and another

... Respondents

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

Present: Mr. Prateek Pandit, Advocate,
for the appellant.

ARUN PALLI, J. (Oral)

The suit filed by the appellant-plaintiff was dismissed by the trial court, vide judgment and decree dated 18.4.2015 and as even the appeal preferred against the said decree failed and was dismissed on 1.7.2017, he (plaintiff No.1) is before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

Plaintiffs prayed for injunction restraining the defendant from demolishing any portion of the house in question, comprised in a land measuring 1 kanal 2 marlas, situated in Mohalla Shergarh, Kapurthala and consisting of four rooms, two bathrooms, kitchen and store on the ground floor and two rooms on the first floor.

In brief, the case set out by the plaintiffs was that Sadhu Singh, father of the plaintiffs and defendant, was earlier married to Smt. Thakri and out of the said wedlock, three children, namely Darshan Singh, Gurmit Kaur and Jeeto, were born. Jeeto had passed away during the lifetime of Sadhu

RSA No. 1910 of 2018 (O&M)

Singh. Whereas, Thakri had died long ago. Whereafter, Sadhu Singh contracted second marriage with Gurmit Kaur. Plaintiffs were sons of Sadhu Singh from his second marriage with Gurmit Kaur. Sadhu Singh too passed away on 13.3.1983. The suit property was constructed during lifetime of Sadhu Singh and plaintiffs had contributed substantial amount for its construction. Defendant (Darshan Singh), who was the step brother of the plaintiffs, was allowed to live in the house in question, as parties being heirs of Sadhu Singh were joint owners in the suit property. But now, the defendant was trying to demolish a part of the house and alienate the same, thus the suit.

In the written statement filed by the defendant, it was pleaded, *inter alia*, that Sadhu Singh, father of the parties, had died about 24 years ago and during his lifetime, he had executed a registered Will dated 17.10.1978, whereby he bequeathed his estate including the suit property in favour of the defendant. Thus, defendant was the owner in possession of the suit property, and therefore, the suit was liable to be dismissed.

Upon consideration of the matter in issue and evidence on record, both the courts concurrently concluded that case set out by the plaintiffs was that in the house constructed by Sadhu Singh, they too had contributed substantial amount. However, plaintiff-Kuldeep Singh (PW1) failed to adduce any evidence in this regard. Likewise, Gurcharan Singh (PW2) also failed to show if any amount was contributed by the plaintiffs, for construction of the house in question by late Sadhu Singh. Neither any bank records were produced nor any source of income or receipt was disclosed by the plaintiffs to substantiate their plea. Not just that, they even failed to prove that they were in actual physical possession of the said house.

RSA No. 1910 of 2018 (O&M)

Rather, it was their own case that they had subsequently shifted to Jalandhar. On the contrary, the defendant proved on record electricity/sewerage bills issued by the municipal council in his name and even the other evidence led in this regard proved his possession over the suit property. Undoubtedly, plaintiffs had questioned the execution and validity of the Will (Ex.D1), vide which the suit property was allegedly bequeathed by Sadhu Singh in favour of the defendant, but as in the present suit the plaintiffs had only prayed for injunction simpliciter, the issue as regards validity of the Will was not required to be gone into. For the plaintiffs to succeed, they were required to show that they were in possession of the suit property, but they evidently failed for lack of evidence.

Upon 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. 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 15, 2019

AK Sharma

Whether speaking / reasoned:

YES

Whether Reportable:

YES/NO