

RSA No. 1207 of 2018 (O&M)

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

RSA No. 1207 of 2018 (O&M)

Date of decision: 15.11.2019

Sajid and others

... Appellants

Versus

Zarina and others

... Respondents

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

Present: Mr. Saqib Ali Khan, Advocate,
for the appellants.

ARUN PALLI, J. (Oral)

The suit filed by the respondent-plaintiff was decreed by the trial court, vide judgment and decree dated 10.02.2012, and as even the appeal preferred against the said decree failed and was dismissed on 06.09.2017, the defendants are before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

The plaintiff prayed for a decree for possession by way of partition to the extent of 2/5th share in the suit property, i.e. a house measuring 53 square yards bearing Municipal Property No. B-XIV/257, shown with letters 'ABCD' at mark X in the site plan attached with the plaint, as also a house and a shop measuring 43 square yards bearing Municipal Property No. B-XIV/308 shown with letters 'ABCDEF' at mark Y in the said site plan. Further, for injunction restraining defendants No. 1 to 6 from alienating any specific portion of the joint property.

In brief, the case set out by the plaintiff was that originally

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Abdul Aziz was the owner of the suit properties, who died in the year 1956. The deceased had two sons, namely Abdul Wahad and Abdul Hameed and five daughters. Khatiza Begum wife of Abdul Aziz and his daughters, namely Kubran, Maryiam, Ulfat and Walkish died during his lifetime. Parties were governed by Mohammedan Law in the matter of succession, alienation and inheritance, as a result, on death of Abdul Aziz, Abdul Wahad and Abdul Hameed became owners of the suit property to the extent of 2/5th share each in the suit property, and the rest 1/5th share devolved upon Sairan, daughter of Abdul Aziz. However, as Abdul Wahad, Abdul Hameed and Sairan had also passed away, plaintiff being daughter of Abdul Hameed, defendant No.1 being widow of Ahad, defendants No. 2 to 6 who were his sons and daughters, and defendants No. 7 to 12 being sons and daughters of Sairan succeeded them respectively. For Hussaina wife of Abdul Hameed had also died, so plaintiff inherited her estate. As plaintiff did not wish to keep her 2/5th share joint with the defendants, thus the suit.

In the written statement filed by defendants No. 1 to 6, they denied the claim of the plaintiff and pleaded that Abdul Aziz had gifted his properties to his sons, namely Abdul Wahad and Abdul Hameed in his lifetime and they accepted the oral gift and obtained possession. Thereafter, Abdul Wahad and Abdul Hameed gifted the suit properties to Abdul Ahad son of Abdul Wahad in the year 1960, who accepted the oral gift and acquired possession of the suit property, who later carried out improvements and expansion in the suit property. Even, water and sewerage connections were issued by the authorities in favour of Abdul Ahad son of Abdul Wahad. Thus, plaintiff had no right, title of interest in the suit properties and the suit was liable to be dismissed.

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Defendants No. 7 and 8, in a separate written statement, admitted the claim of the plaintiff. However, they claimed that they had every right to alienate their share in the manner they liked.

Upon consideration of the matter in issue and evidence on record, both the courts concurrently concluded that defendants No. 1 to 6 were claiming title on the basis of Hiba, alleged to have been made by Abdul Wahad and Abdul Hameed in favour of Abdul Ahad. However, they failed to produce any witness in whose presence Abdul Hameed, father of the plaintiff, had made Hiba in favour of Abdul Ahad. Although Sohail (DW3) deposed that Abdul Wahad and Abdul Hameed had gifted the suit properties to Abdul Ahad in the year 1960 in the presence of relatives and respectable, but he failed to name any of them who was present at the time the Hiba was made. Not just that, Sohail (DW3) conceded in his cross-examination that he did not even know if the alleged Hiba/gift was made orally or any writing was recorded in this regard. Still further, defendants were required to adduce evidence and prove acceptance of said Hiba and delivery of possession of the suit property. However, no cogent evidence was led in this regard. Albeit, Mohd. Yasin (DW1), Harmandeep Singh (DW2), Shamsheer Singh (DW4), Gufar Mohd. (DW5) and Mohd. Salim (DW6) deposed as regards possession of the defendants over the suit property, but they failed to explain the basis and as to how Abdul Ahad was owner of the disputed properties. The copies of the electricity, water and sewerage bills could hardly be termed as evidence of ownership and title in favour of Abdul Ahad. Thus, the only and the inevitable conclusion that could be reached: the defendants failed to prove that Abdul Hameed, father of plaintiff, ever made any Hiba/gift in favour of Abdul Ahad. For, it was not disputed that

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plaintiff-Zarina, daughter of Abdul Hameed, was his sole heir and the defendants having failed to prove the alleged Hiba/gift, she was entitled to succeed to the 2/5th share in the suit properties held by her late father Abdul Hameed.

Upon being pointedly asked, learned counsel for the appellants 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