

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

**RSA NO. 1184 OF 2019 (O&M)
DATE OF DECISION : 22.01.2020**

Kiran Sharma

...Appellant

versus

Yogesh Kumar

...Respondent

RSA NO. 2975 of 2019 (O&M)

Kiran Sharma

...Appellant

versus

Yogesh Kumar and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. AmanVashsht, Advocate,
for the appellant(s).

None for the respondent(s).

ARUN MONGA, J. (ORAL)

CM NO. 8091-C OF 2019

For the reasons stated in the application, same is
allowed and delay of 13 days in filing the appeal is condoned.

MAIN CASES

Having been unsuccessful in both the Courts below,
the plaintiff in suit No.115/CS of 2009, who was a defendant in
suit No.114/CS of 2009, has preferred these above mentioned
two second appeals arising out of common judgment and decree
dated 30.10.2014 of the trial Court and dated 09.10.2018 of the
First Appellate Court, whereby the suit preferred by the appellant
was dismissed and suit No.114/CS of 2009, in which she was a
defendant, was decreed.

2. For convenience, the suits are hereinafter referred as Suit No.1 and Suit No.2, as was done before Courts below. Facts from Suit No.1 are as under :

CIVIL SUIT NO.1

3. Succinct factual matrix of the case as noticed by the First Appellate Court is that House No.958, Durga Garden, Jagadhari (suit property) was self acquired property of late Smt. Santosh Kumari, mother of the plaintiff/appellant. The said property was purchased vide registered sale deed dated 09.01.1974 and thereafter a house was constructed on the same. The plaintiff being the daughter of vendee/late Smt. Santosh Kumari, sought possession of the suit property on the basis of propounding Will dated 10.08.2002 executed in her favour. The plaintiff pleaded that she looked after her parents during their life time in their old age and provided them all necessities of life and being happy with her, a Will was executed by her deceased mother in her favour. After the death of her mother, the plaintiff got the Will in question registered at Serial No. 308 dated 14.09.2006 before the Sub Registrar, Jagadhari. The Will was registered after issuance of a notice to general public and no objection was filed by the defendant (brother of the plaintiff). The defendant who is brother of plaintiff, is living in the suit property. In his written statement, he denied the execution of Will dated 10.08.2002 in favour of the plaintiff. He also put up defence that the said Will is a forged document and does not

confer any right or title in favour of the plaintiff. In the premise, it is pleaded that all the surviving legal heirs are the joint owners of the suit property.

4. Based on the rival pleadings, following issues were framed in Civil Suit No. 115-CS of 2009 :-

- 1) Whether the plaintiff is entitled to a decree for possession by ejectment of the defendant from the House No.958, as detailed in head note of plaint ? OPP
- 2) Whether the suit of the plaintiff is bad for non-joinder of necessary party ? OPD
- 3) Whether the plaintiff has concealed the true and material facts from the Court ? OPD
- 4) Whether suit of the plaintiff is legally not maintainable ? OPD
- 5) Whether the plaintiff has got no locus-standi to file and maintain the present suit against the defendant ? OPD
- 6) Whether the plaintiff has no cause of action to file and maintain the present suit against the defendant ? OPD
- 7) Relief.

CIVIL SUIT NO.2

5. Plaintiff-Yogesh Kumar (respondent herein) along with others filed a suit for declaration to the effect that they are owners and in joint possession of House No.958, Durga Garden, Jagadhari and another house marked as ABCD in the site plan, to the extent of half share each. The Will dated 10.08.2002 alleged

to be executed by their mother in favour of Kiran Sharma (appellant herein) is illegal and void being a fake document.

6. Late Smt. Santosh Kumari was owner in possession of both the properties, as mentioned in head note of the plaint. She purchased the suit property from joint funds of the family. She died intestate on 29.02.2002 leaving behind six legal heirs. After her death, plaintiff-Yogesh Kumar along with his two brothers namely Jitender Kumar and Shakti Kumar started living in House No.958, whereas out of another property, four rooms were given on rent and rest of the property was in their joint possession in equal shares. In the month of November, 2008, Kiran Sharma (appellant herein) started asserting her right over the suit property exclusively and also started threatening to alienate the same to some other persons. Yogesh Kumar filed suit for permanent injunction restraining Kiran Sharma from alienating or creating any right on the suit property. Kiran Sharma appeared in that case and filed written statement alleging about execution of Will dated 10.08.2002 by her late mother Smt. Santosh Kumari. The said suit was withdrawn by Yogesh Kumar with permission to file a new one challenging the alleged Will. This new suit was later filed.

7. Based on rival pleadings of the parties, following issues were framed :-

- 1) Whether the Will dated 10.08.2002 registered on 14.09.2006 allegedly executed by Smt. Santosh Kumari in favour of defendant No.1 is

illegal, null, void and not binding upon the rights of the plaintiff ? OPP

- 2) Whether the plaintiff is entitled to the relief of declaration as prayed for ? OPP
- 3) Whether the plaintiffs are entitled to the permanent injunction, as prayed for ? OPP
- 4) Whether the present suit is not maintainable ? OPD
- 5) Whether the plaintiffs are estopped from filing the present suit by their own act and conduct ? OPD
- 6) Whether the plaintiff has got no locus-standi to file the present suit ? OPD
- 7) Relief.

8. Both the parties led their respective oral and documentary evidence in support of their pleadings and to discharge their onus, as per issues *ibid*.

9. Based on the collective evidence adduced by both the parties, the trial Court returned the findings in suit No.114/CS of 2009 on Issues No.2 and 3 against the appellant inasmuch as dis-entitling her for the relief sought by her in both the suits.

10. The trial Court held that the mother is succeeded by six children. Plaintiff claims to be the exclusive owner of the suit property as per Will dated 10.08.2002. It did not accept that in a property where all the sons of late Smt. Santosh Kumari lived, the same was bequeathed to a sole beneficiary i.e Kiran Sharma

(plaintiff). Further more, it cannot be fathomed as to why appellant was not informed about the said Will despite the fact that she claims to have solely taken care of late Smt. Santosh Kumari. It was further held that late Smt. Santosh Kumari would not have left out all her five children from her movable and immovable properties. PW-7 who was a close confidant of Santosh Kumari did not state anything about her strained relations with her other five children. There is mention of amount and gifts being given by late Smt. Santosh Kumari to her daughters, but no details thereof have been given. There have been anomalies in the testimony of PW-7 ChhoteLal and it appears that it would be unfit for late Smt. Santosh Kumari to confide in PW-1 JagdishLamba, Draftsman, Jagadhari and legitimate suspicions were not removed by the plaintiff. Furthermore, Will dated 10.08.2002 does not satisfy the judicial conscience of the Court.

11. Having considered the judgment of trial Court and appreciation thereof, the First Appellate Court upheld the same by concluding that the Will dated 10.08.2002 does not satisfy the judicial conscience and the same, therefore, cannot be relied upon. In the premise, both the Court below returned the findings that all the six legal heirs of deceased Santosh Kumari are joint owners in possession of both the houses which are suit properties herein.

12. There seems to be no perversity or illegality in the

concurrent findings of facts returned by the Courts below. Mere deviation from procedural requirements under Order 41 Rule 31 CPC (formulation of questions for adjudication in appeals) does not call for any interference to disturb the concurrent findings of facts recorded by the Courts below.

13. Furthermore, neither any question of law much less substantial question of law, which is sine qua non for entertaining second appeal before this Court is involved in present appeal so as to exercise appellate jurisdiction under Section 41 of the Punjab Courts Act read with Section 100 of Code of Civil Procedure.

14. In view of my above discussion and the reasons recorded therein, the appeal is dismissed being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by the Courts below are upheld.

15. Pending applications, if any, also stand disposed of.

16. No order as to costs.

(ARUN MONGA)
JUDGE

JANUARY 22, 2020

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1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No