

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

**RSA No.290 of 1989
Date of Order:21.05.2020**

Om Parkash

...Appellant

Versus

**Niranjan Kumar (since deceased) through
his Lrs and others**

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr. Rajesh Sethi, Advocate and
Mr. Gaurav Kamboj, Advocate and
Mr. Tushar Gera, Advocate,
for the appellant.**

**Mr. Ashok Kumar Verma, Advocate,
for Lrs of respondent no.1.**

ANIL KSHETARPAL, J.

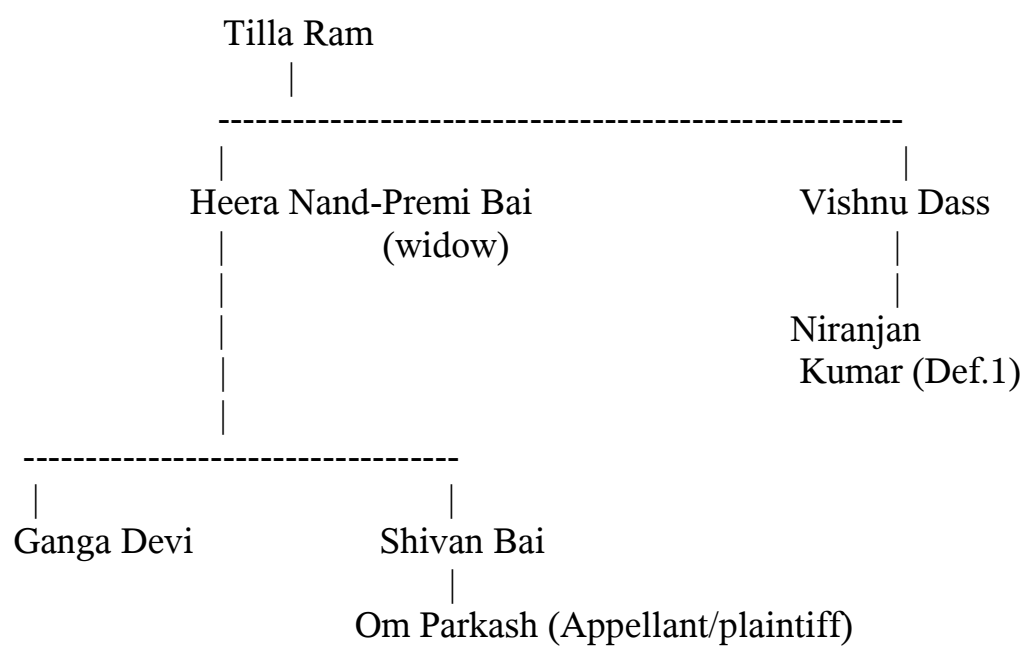
The plaintiff-appellant has filed the regular second appeal against the judgment passed by learned first appellate court reversing judgment and decree passed by the trial court.

He claims declaration that he is owner in possession of house bearing Municipal Committee No.471 located in Rania, Tehsil and District Sirsa. He also challenged correctness of the judgment and decree dated 02.03.1983 passed in Niranjan Kumar son of Vishnu Dass Vs. Smt. Premi Bai widow of Heera Nand, Civil Suit No.158. He claims to be adopted son by Heera Nand son of Tilla Ram. It is further alleged that since the date of adoption, the plaintiff continue to reside in the aforesaid house along with

defendant no.2, who is widow of late Sh. Heera Nand. He further alleged that as per adoption deed the plaintiff is exclusive legal heir of late Sh. Heera Nand, who expired on 27.12.1975 and therefore, the plaintiff is owner in possession.

Two defendants were impleaded in the suit. One is Niranjn Kumar son of Vishnu Dass son of Tilla Ram and second is Smt. Premi Bai widow of Heera Nand son of Tilla Ram.

In order to understand relationship between the parties, it would be appropriate to draw a pedigree table, which is as under:-



It is apparent that Tilla Ram was common ancestor of the parties. He had two sons-Heera Nand and Vishnu Dass. Smt. Premi Bai is widow of Heera Nand. Heera Nand had two daughters Ganga Devi and Shivan Bai. Name of husband of Shivan Bai was Golu Ram alias Dholu Ram. Om Parkash (the plaintiff in the suit) is son of Shivan Bai. Niranjn Kumar defendant no.1 is son of Vishnu Dass. It is undisputed that Om Parkash was adopted by Heera Nand, acknowledged by a registered adoption deed dated 28.12.1973.

The defendants filed a joint written statement. It was asserted

that the suit property was owned and possessed by Smt. Premi Bai, who in a family settlement acknowledged that defendant no.1 is owner of the property. It was claimed that Smt. Premi Bai willingly, appointed Shri Bishan Dass, brother of her husband as her General Power of Attorney holder and suffered decree with respect to the house in question in favour of defendant no.1. It was further claimed that the plaintiff has managed to get a notice issued from the Municipal Committee in his name demanding of house tax payable and on the basis thereof claims ownership.

As noticed above, learned trial court decreed the suit whereas learned first appellate court has reversed the judgment and decree passed by the learned trial court on re-appreciation of evidence.

In the present case, crucial question which needs adjudication is whether late Sh. Heera Nand was owner of the suit property or not? If that fact is proved then consequent question which would arise is that whether the registered adoption deed can be treated as testamentary disposition or not and if yes, then whether the plaintiff becomes the owner of the property?

It may be noted here that the plaintiff has failed to produce any documentary evidence to prove that the suit property was owned by late Sh. Heera Nand at the time of his death. Only oral evidence has been led. It is proved on file that in the municipal record, the property was owned and possessed by Smt. Premi Bai which was later on mutated, pursuant to the judgment and decree passed by the civil court dated 02.03.1983 in favour of defendant no.1.

This court has heard learned counsels for the parties at length and with their able assistance, gone through the judgments passed by the

courts below.

It may be noted here that the learned counsel for the appellant has proposed the following substantial questions of law by filing a miscellaneous application i.e. C.M.No.1051-C-2012:-

- (i) *Whether the first appellate court after having reached a conclusion that Ex.P1 was a validly executed document by Sh. Heera Nand, did not commit error in not treating the same as his Will/testament by completely ignoring the recital which in English reads as under:-
"and none else will have any right in the estate left by me at my death".*
- (ii) *Whether the first appellate court did not commit error in appreciating that even in a case Ex.P1 could not be treated as a Will, then also Smt. Premi Bai could not suffer a decree more than her $\frac{1}{4}$ share in the estate of Sh. Heera Nand who left behind widow (Smt. Premi Bai), (2) son (appellant) and two daughters?*
- (iii) *Whether the first appellate court did not misread, misinterpreted and mis construed the evidence on record, more particularly the testimony of Sh. Niranjana Kumar, who firstly got appointed himself as attorney of Smt. Premi Bai and then suffered a decree in favour of his son, and who also admitted that neither the summons of the suit were served upon him or Smt. Premi Bai and that he accompanied his son on his asking to the Court and made a statement in his favour?*
- (iv) *Whether the first appellate court did not commit error in not appreciating the clear cut admission of DW4-Niranjana as per which he admitted that attorney deed Ex.D1 was obtained by him from Premi Bai for pursuing the cases pending between Om Parkash and Premi Bai?*
- (v) *Whether the first appellate court did not commit error in not appreciating that the "fraud can either be proved by direct evidence or on the basis of valid inferences drawn from the proved facts".*
- (vi) *Whether the first appellate court did not commit error while holding Ex.PX and PY (collusive judgment and decree) to be binding upon appellant whereas he was not at all a party thereto?*
- (vii) *Whether or whether not the first appellate court failed*

to appreciate that "fraud vitiates all actions and that no one can be permitted to thrive on fraud"?

- (viii) *Whether the first appellate court did not error in reversing the well reasoned and well merited judgment of the trial court, without meeting with the reasoning of the trial court and also without assigning better reasoning in its judgment?*
- (ix) *Whether the finding recorded by the first appellate court on misreading and mis-interpretation of pleadings and evidence both, involves a substantial question of law or not?*
- (x) *Whether the judgment and decree of the first appellate court are required to be set aside and reversed on account of being perverse and unsustainable in the eyes of law and more particularly, when it is found that the view point taken is based upon perfunctory and superficial approach?*

Learned counsel for the appellant has submitted while referring to the statements of various witnesses, that the judgment passed by the learned first appellate court is result of non-appreciation of evidence. He further submitted while reading registered deed i.e. Ex.P1 that Sh. Heera Nand had declared that after his death, the plaintiff shall be the exclusive owner of the entire property left behind by him. He, hence, contended that the registered deed should be treated as testamentary disposition and, therefore, it is the plaintiff, who has become the owner of the property. He further submitted that Vishnu Dass on the strength of Power of Attorney executed by Smt. Premi Devi has suffered a decree in favour of his own son and therefore, such decree cannot be held to be genuine.

On the other hand, learned counsel appearing for the respondents has submitted that it is established fact on the file that Om Parkash-the plaintiff had fraudulently got transferred agricultural land from Smt. Premi Bai forcing her to file a suit to challenge the same. Sh. Vishnu Dass was appointed as General Power of Attorney holder by Smt. Premi Bai

to prosecute aforesaid suit in her behalf. He was specifically authorised to admit claim in the suit and enter into compromise. He further submitted that Smt. Premi Bai herself had appeared in the previous suit and suffered a statement admitting the claim of Niranjana Kumar. In this regard, he relied upon copy of the judgment/order passed on 02.03.1983 wherein it is recorded that Smt. Premi Bai has filed a written statement admitting the claim of Niranjana Kumar in the suit and made a statement on oath. He, hence, submitted that the judgment passed by learned first appellate court requires to interference.

This court has carefully analyzed the arguments of learned counsels for the parties and with their able assistance gone through the judgments passed by the courts below along with the requisitioned record.

At the outset, it must be noticed that no reliable evidence has been produced by the plaintiff to prove that late Sh. Heera Nand was owner of the suit property. It has come in evidence that relationship between the plaintiff and defendant no.2 were not cordial. There was a litigation between Smt. Premi Bai and adopted son i.e. Om Parkash, the plaintiff. In the aforesaid litigation, Smt. Premi Bai had appointed Sh. Vishnu Dass, brother of her deceased husband as the General Power of Attorney, Ex.D1.

Still further, on careful reading of the order passed on 02.03.1983, it is apparent that Smt. Premi Bai had appeared herself in evidence and suffered a statement admitting the claim of Niranjana Kumar in the previous suit. Hence, the argument of learned counsel with regard to misuse of General Power of Attorney is not borne from the record.

Still further, there is no documentary evidence to prove that Heera Nand was owner of the property. Rather it has come on record that

Smt. Premi Bai was recorded as owner of the suit property in municipal record.

The plaintiff has appeared in evidence as PW7 and has admitted that he moved an application with the municipal committee for correcting the entry in the municipal record which was rejected. It has also come on record that in fact there are 2 different properties, one is in possession of the plaintiff, whereas other one which was originally in the name of Smt. Premi Bai, later on mutated in favour of Niranjana Kumar.

Still further on careful reading of the statement of Smt. Premi Bai, DW1 that she has admitted that there was litigation between her on the one side and Om Parkash, the plaintiff, on the other side. Sh. Vishnu Dass used to help her. In evidence, she has made an attempt to help the plaintiff, however, remained unsuccessful.

Keeping in view the aforesaid facts, this court does not find that the judgment passed by learned first appellate court requires any interference. Learned first appellate court on appreciation of evidence has correctly come to a conclusion.

In view of the aforesaid, the arguments of learned counsel for the appellant that the registered deed acknowledging adoption should be treated as testamentary disposition shall not be required to be dealt with because it is not proved that late Sh. Heera Nand was owner of the suit property. It has come in evidence that Smt. Premi Bai had transferred agricultural land in favour of Om Parkash, the plaintiff.

Now let's examine the proposed questions of law which have been extracted above.

Question No.(i) is not required to be answered because Heera

Nand is not proved to be owner of the suit property. Question No.(ii) is also answered in the same manner. Question No.(iii) is factually incorrect as Premi Bai had appointed Vishnu Dass as her attorney and not Niranjana Kumar. In any case, it is apparent from the reading of the order dated 02.03.1983 that Smt. Premi Bai had herself appeared in evidence and admitted the claim of Niranjana Kumar. Thus, question no.(iii) also does not arise.

Question No.(iv) is also answered in the manner, question no. (iii) has been answered because Smt. Premi Bai had appeared herself in evidence in the previous suit. The plaintiff has not produced any evidence to prove that Smt. Premi Bai had not appeared or the order recorded by the Court on 02.03.1983 is against the record. Question No.(v) is also answered in the same manner as is the answer to questions no.(iii) and (iv).

Question No.(vi) does not arise because the judgment Ex.PX and decree Ex.PY is based upon a family settlement and it is proved on file that they are all members of a family. Heera Nand was never the owner of the suit property, therefore, the appellant cannot claim any right, title or interest on the basis of deed. It may be noted here that Question No.(vii) does not arise in the present case because plaintiff has failed to prove fraud.

With regard to question Nos.(viii), (ix) and (x), it may be noted that the appellant has failed to convince this court that the learned first appellate court has incorrectly appreciated the facts and the evidence available on the record while giving its judgment. It is the plaintiff who has filed the present suit and hence required to stand on his own legs. Once the plaintiff has alleged fraud on the strength of the fact that Heera Nand was the owner of the suit property, he was required to prove that fact. However,

the plaintiff has failed to prove. Hence, this court does not find that the judgment passed by the learned first appellate court require interference.

Hence, the appeal is dismissed.

21st May, 2020
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No