

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

RSA No.1514 of 1994

Date of decision: 5th March, 2020

Bharat Singh

... Appellant

Versus

Ashwani Kumar & others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Amar Vivek, Advocates for the appellant.

Mr. Brijeshwar S. Jaswal, Advocate for respondents.

FATEH DEEP SINGH, J.

During the course of hearing arguments, it has transpired that in a suit by the plaintiff (now appellant) against the present respondents Ashwani Kumar and others (then defendants) the plaintiff has based his claim over a Will dated 10.12.1976 Ex.P1 contending that Rattan Singh testator of this Will, who was owner of the properties No.1 and 2 along with other articles detailed in the head note of the plaint, had died on 24.10.1985 and that Rattan Singh having died a bachelor and thus issueless was being served by the plaintiff and defendants and out of which love and affection the registered Will has come about according to which the plaintiff and defendants No.5 to 9 claim to have inherited 1/3rd

share whereas $1/3^{\text{rd}}$ share was to go to defendants No.1 and 2, and the remaining $1/3^{\text{rd}}$ share to defendants No.3 and 4.

However, the defendants have denied this plea and claimed that property No.1 and the other articles mentioned in the plaint were never owned by Rattan Singh deceased and he was owner of property No.2 only as he purchased it from one Basta Singh vide sale deed dated 26.06.1965 and after the death of Rattan Singh according to the Will dated 10.12.1976 it devolved upon the defendants, and therefore, claim and counter-claim by the two sides have come about on the basis of which the plaintiff filed the suit for declaration to be the owner and in possession of $1/3^{\text{rd}}$ share of the suit property.

The trial Court had framed following issues:-

1. Whether the articles mentioned in Annexure A had been owned by Rattan Singh, if so its effect? OPP
2. Whether the plaintiff is entitled to the possession as prayed for? OPP
3. Whether the plaintiff is entitled to the injunction as prayed for? OPP
4. Whether the suit is not maintainable in the present form? OPD

5. Whether the suit is barred under Order 23 Rule 1 CPC?

OPD

6. Relief.

Thus, from which it is apparent that the claim of the plaintiff and the opposition by the defendants was over the very legality and validity of the Will dated 10.12.1976 and subsequent right to ownership and possession of the property, and which important issue the trial Court omitted to frame nor adjudicated upon such contentious stands of the two sides which was essential for judicious adjudication.

This Court in the light of peculiar situation, exercising its power under Order 41 Rule 25 CPC frames the following issues:-

5A. Whether deceased Rattan Singh executed a legally valid registered Will dated 10.12.1976, if so, to what effect? OPP

5B. Whether the plaintiff is entitled to decree of possession of the suit land on the basis of the registered Will dated 10.12.1976, if so, to what share and extent? OPP

In the light of what has come across to this Court, there has been virtual non-determination of material question of fact which was essential to be adjudicated for comprehensive judicious decision on the case and therefore, the matter is referred back to the trial Court directing

if necessitated to take additional evidence on these issues so framed above and try and proceed with the issues, and return along with the report thereon to this Court within a period of two months the parties put in appearance before the Court. The parties through their counsel are directed to appear before the trial Court on 28.04.2020. Office to complete the records.

(FATEH DEEP SINGH)
JUDGE

March 5, 2020

rps

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