

Sr. No.115

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

RSA No.4804 of 2018 (O&M)

Date of Decision: 21.01.2020

Kamlesh Rani and others

...Appellants

Versus

Murari Lal and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. P.K.Ganga, Advocate,
for the appellants.

ARUN MONGA, J.

1. Having suffered judgment and decree by the two Courts below defendants are in second appeal before this Court to challenge the decreeing of suit in favour of the plaintiff for declaration that they are owner in possession of suit land as per the revenue entries for year 2007-08 and a Will dated 11.06.2010 executed in their favour. The Trial Court believed the case set up by the plaintiff and decreed the suit in favour of the plaintiff and the First Appellate Court too upheld the findings rendered by the Trial Court.

2. Succinct factual narrative first, as noticed by the Courts below. The appellants contend that late Rewar Ram alias Rekar Ram was the owner of the suit property and during his lifetime, he resided with his son Murari Lal, who looked after his father. Owing to the services rendered by the plaintiff son, his father executed a registered Will bearing No. 49 dated 11.06.2010 bequeathing his movable and immovable property in favour of the plaintiff. After

the death of deceased Rekar Ram, his son (plaintiff) thus became the owner in possession of the suit property.

3. In the written statement filed by the defendants, the title and the possession of deceased Rekar Ram during his life time has been admitted. But it is stated that it is in fact the defendants who rendered their services to Rekar Ram and by virtue of an oral partition carried out by the Rekar Ram during his life time they are entitled to the suit property. They denied that Rekar Ram executed any Will during his life time and pleaded that the Will set up by the plaintiff was a result of fraud and the same is not binding on the defendants.

4. Based on the rival pleadings of the parties, the trial Court framed the following issues:-

1. *Whether the plaintiff is entitled for a decree for declaration on the ground as mentioned in the head note of the plaint and as prayed for? OPP.*
2. *If issue no.1 is decided in favour of the plaintiff then whether the plaintiff is also entitled for consequential relief for permanent injunction restraining the defendants from alienating the suit land and from interfering into the possession of the plaintiff over the suit land as mentioned in the head note of the plaint and as prayed for? OPP*
3. *Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD*
4. *Whether the suit of the plaintiff is not maintainable in the present form? OPD*

5. Issue No.1 to 2 being interlinked and were taken up together by the trial Court and were decided in favour of the plaintiff. It was held that original Will dated 11.06.2010 is duly

registered document and the Scribe of the Will PW-1 deposed that he scribed the said Will and got it registered at Sr. No.323 on 11.06.2010. The Will was read over to Rekar Ram and his thumb impression was taken in presence of the witnesses. PW Jagsir Singh attesting witness proved its due and valid execution. Being self acquired property deceased Rekar Ram was fully competent to bequeath the same in favour of his son plaintiff.

6. As regards the plea of fraud set up by the defendants, the trial Court held that neither they adduced any specific evidence qua the same nor even otherwise any fraud was made out on the basis of available evidence on record. In this background issues No.3 and 4 were also decided in favour of the plaintiff as a necessary consequence.

7. The First Appellate Court agreed with the findings rendered by the trial Court and upheld the judgment and decree passed pursuant thereto.

8. I have heard the learned counsel and have perused the judgments and decrees of both the Courts below. To my mind, these judgments have been passed after due appreciation of evidence adduced by the respective parties in support of their pleadings to discharge their onus to prove in terms of the issues, *ibid*. This Court is of the view that bald plea of fraud set up by the defendants is totally unsubstantiated as against the registered Will set up by the plaintiff which has been successfully proved by him in his favour.

9. There seems no perversity or illegality in the

concurrent findings of facts returned by the Courts below by appreciation of evidence. Mere deviation from procedural requirements under Order 41 Rule 31 PC does not call for any interference to disturb the concurrent findings of facts recorded by the Courts below.

10. 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 Civil Procedure Code.

11. In view of my discussion above and reasons recorded therein, no interference is called for by this Court.

12. Appeal is, accordingly, dismissed.

13. Pending application, if any, shall also stand disposed of.

14. No order as to costs.

21.01.2020

vandana

**(ARUN MONGA)
JUDGE**

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No