

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

RSA No.1863 of 2022 (O&M)

Date of decision: 21.09.2022

Piara Lal (deceased) through LRs

..... Appellants

versus

Kewal Krishan and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Ravi Chadda, Advocate
for the appellants.

TRIBHUVAN DAHIYA J.

CM No.6485-C of 2022

For the reasons stated in the application, the delay of 76 days in filing the appeal is condoned.

CM No.6486-C of 2022

Allowed as prayed for.

RSA No.1863 of 2022 (O&M)

This is the appellants-defendants' second appeal in a suit for declaration filed by the respondents-plaintiffs (hereinafter referred to as 'the plaintiffs') to the effect that they are the only legal heirs of deceased Malawi on the basis of registered Will dated 31.08.2000, and are joint owners in possession of the house in question. The

consequential relief of permanent injunction restraining the appellants-defendants (hereinafter referred to as 'the defendants') from denying the title of the respondents-plaintiffs and interfering in their peaceful possession was also sought.

2. On the basis of evidence led, the trial Court as well as the lower Appellate Court recorded findings of fact that house in dispute was owned and possessed by the plaintiffs' grandmother Malawi Devi, who died on 20.04.2003. During her lifetime, she executed a duly registered Will dated 31.08.2000 in favour of the plaintiffs. On that basis, they are in continuous possession of the house in dispute. It has also been recorded that defendant, Raj Kumar himself admitted possession of the plaintiffs. The finding recorded by the lower Appellate Court in this regard in para No.13 of the judgment read as under:

13. It is admitted by defendant Raj Kumar that the disputed house is in possession of plaintiffs. When the defendant Raj Kumar himself admits the possession of the plaintiffs and property claimed by them in House No.369/1, in which they are residing. Raj Kumar further admitted that it is correct that as per Ex.PW6/A, the house in dispute is property No.370. When the property claimed by the defendants is bearing No.369/1, so, it is altogether different property. Hence, Learned Trial Court has rightly held that the properties as claimed by the plaintiffs as well as defendants are different. The Will dated 31.8.2000, was duly executed by Malavi which has been proved on file, according to law. As such, it is held that the plaintiffs-respondents are joint owners in possession of house in dispute on the basis of registered Will dated 31.8.2000 executed by

deceased Malavi and defendant No.1 is recorded owner in possession of house No.369/1 who had raised construction over it in the year 1981 after getting the site plan sanctioned.

3. The only argument raised by learned counsel for the defendants is that the ownership of the executant of the Will, i.e., Malawi Devi with respect to the property in question, has not been established on record. Therefore, the plaintiffs cannot claim to be the owners in possession of the house on that basis.

4. This argument of learned counsel for the defendants has no merit, in view of the fact that the case set up by the respondents-plaintiffs is that they are joint owners in possession of the house in dispute on the basis of the registered Will dated 31.08.2000, and it cannot be denied that the defendant himself has admitted plaintiffs' possession over the house bearing No.370. Execution of Will (Exhibit P-1) by Malawi has also duly proved on record. It is also established on record that as per documents Exhibit PW-4/A to Ex.PW-4/I, Smt. Malawi Devi is shown as owner of the house in dispute, bearing No.370, Ward No.9, and on the basis of Will, the house has been transferred in plaintiffs' name. It has further been held that defendant himself has admitted that Malawi Devi was owner of the house in dispute.

5. In view of the above, it is held that judgments of the Courts below do not suffer from any error of law. No substantial

question of law arises for consideration in the appeal.

6. Dismissed.

(TRIBHUVAN DAHIYA)
JUDGE

21.09.2022

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No