

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-1588-2022

DATE OF DECISION: AUGUST 2, 2022

JUJHAR SINGH

...APPELLANT

VERSUS

MANGAT RAM & ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ.

PRESENT: MR. ISH PUNEET SINGH, ADVOCATE FOR THE APPELLANT.

MANOJ BAJAJ, J.(ORAL)

Jhujhar Singh-appellant is aggrieved against the judgement and decree dated 31.3.2022, passed in Civil Appeal RBT No.38/2021 by the first appellate Court, whereby the judgement and decree dated 9.1.2019, passed in Civil Suit No.93 of 2015 by Civil Judge(Sr.Divn.), SBS Nagar, dismissing his suit for declaration and ejectment of respondent No.1 was affirmed.

Briefly, the facts of the case are that the appellant (plaintiff) filed a suit against the respondent Mangat Ram (tenant) and general public to claim declaration that as whereabouts of his father, namely, Balbir Singh are not known since February, 2008, he be declared dead, and the suit property, i.e. the residential house in the limits of Village Katt, Tehsil Banga, District SBS Nagar, given on rent to respondent No.1 has devolved upon him, so he also prayed for eviction of the tenant. As per pleadings, vide rent deed dated 7.4.2007 executed by Balbir Singh, the suit property was given on monthly rent of ₹300/- to defendant No.1, but he never paid

the rent to the plaintiff's father and after disappearance of Balbir Singh, the

tenant has refused to make the payment of rent to the plaintiff. Further, the plaintiff also propounded a Will dated 28.2.2008, to claim his ownership in respect of suit property and also prayed for a decree of declaration and eviction of tenant.

Mangat Ram-Defendant No.1 contested the suit by filing written statement, who raised various preliminary objections relating to maintainability, non-joinder of necessary parties, *locus standi* etc. and on merits, it was not disputed that Balbir Singh used to collect rent from the defendant. Further denying the claim of the plaintiff regarding his ownership of the suit property and Will, he prayed that the suit be dismissed.

After completion of pleadings, the trial Court in all framed seven issues and thereafter the parties adduced their respective evidence and considering the same, the trial Court proceeded to dismiss the suit by answering the relevant issues against the plaintiff vide its judgement and decree dated 9.1.2019.

Dissatisfied with the judgement and decree dated 9.1.2019, the appellant carried an appeal before the Addl. District Judge, SBS Nagar and the same was also dismissed through the impugned judgement and decree dated 31.3.2022. Hence, this Regular Second Appeal.

Learned counsel for the appellant has argued that the plaintiff had discharged the onus on relevant issues successfully and there is nothing to indicate the whereabouts of his father who is not seen since February, 2008 and once the defendant has not disputed his relationship with his father, he cannot continue to remain in possession of the property without

paying any rent. He has argued that though there is no declaration sought in respect of the Will dated 28.2.2008 executed by Balbir Singh and propounded by the plaintiff, but on the basis of the same, property would devolve upon him. According to him, the trial Court has not considered the evidence on record carefully while dismissing his suit, on the ground that the necessary parties who are the brother and sister of the plaintiff have not been impleaded, and further erroneously refused to declare Balbir Singh as dead, who is missing for last more than seven years. Learned counsel vehemently argued that the evidence of the plaintiff has gone unimpeached, despite that his claim was dismissed.

Learned counsel has further argued that during the pendency of the first appeal, the plaintiff had moved two applications and sought amendment of plaint, as well as impleadment of brother and sister as necessary parties, but the appellate Court vide its decision dated 10.1.2022, allowed the amendment of pleadings, and declined impleadment of necessary parties. He submits that subsequently on 31.3.2022, without appreciating the material on record, his appeal was dismissed. He prays that the impugned judgement and decree be set aside.

After hearing the learned counsel and considering the pleadings and evidence, this Court finds that as per plaintiff, his father went missing on 28.2.2008, the date when he had executed a registered Will in favour of the plaintiff, but in order to prove disappearance of Balbir Singh, the necessary parties who are the brother and sister were neither impleaded in the suit nor were produced as witnesses. Since, the plaintiff has failed to prove the disappearance of the his father, the claim based upon the Will

would also naturally fall. Though, according to learned counsel, the plaintiff has examined the attesting witness in order to prove the Will, but it would take effect, if the death of the testator is established. The other argument raised by learned counsel that once the amendment of pleadings was allowed, the appellate Court ought to have allowed the impleadment of the necessary parties on the ground that the suit should not have failed for non-joinder of necessary parties, is also without any merit, as the application was moved at a belated stage and by that time, the suit had already been decided.

A perusal of the impugned judgements and decrees passed by the trial Court and the appellate Court shows that the findings returned on the material issues are based on proper appreciation of evidence and the same do not suffer from any perversity.

Resultantly, finding no merit in this appeal, much less involvement of substantial question of law, no ground is made out for interference.

Appeal is dismissed.

August 2, 2022
Gulati

(MANOJ BAJAJ)
JUDGE

Whether Reportable : Yes/No

Whether Speaking/Reasoned : Yes/No