

119

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1690-2022 (O&M)
Date of Decision: 14.12.2022

SURESH KUMAR

.. Appellant

Vs.

SUSHIL KUMAR AND OTHERS

..Respondents

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. A.P. Kaushal, Advocate and
Mr. Paras Talwar, Advocate
for the appellant.

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Manoj Bajaj, J. (Oral)

The appellant (defendant No.4) is aggrieved against the judgment and decree dated 17.05.2022 passed by the District Judge, Hoshiarpur, whereby it has affirmed the judgment and decree dated 03.02.2017 passed by Civil Judge (Jr. Divn.), Hoshiarpur decreeing the suit of the plaintiffs (respondent Nos.1 and 2) for possession by way of partition.

Learned counsel for the appellant has argued that the plaintiff No.1 and defendant Nos.1 and 3 are his real uncles and suit was filed by Sushil Kumar and his wife for separate possession to the extent of half share, by way of partition of suit property bearing No.101-L, Model Town, Hoshiarpur, wherein the shares of the parties were determined. He submits that as per decree dated 03.02.2017 passed by Civil Judge (Jr. Divn.), Hoshiarpur, plaintiffs were held entitled to 1/7th share and 3/8th share respectively, whereas defendants No.1 to 3 were held entitled to 1/7th share each. He submits that the parties are descendants of original owner, namely,

Bhim Sen and his daughters had given up their share in the suit property in

favour of their brothers, but the share in the suit property, which had fallen upon Tarawati widow of Bhim Sen (grandmother of the appellant) was not determined properly, as she had executed a Will in favour of the appellant. He submits that the impugned judgment and decree passed by both the Courts have failed to address the issue relating to the Will in favour of the appellant, therefore, interference is warranted by this Court.

During the course of hearing, it is not disputed by learned counsel that neither any written statement was filed by the appellant nor any evidence was adduced either by the appellant or his father, namely, Sudarshan Kumar (defendant No.1), as both were proceeded against *ex parte*. Apart from this, it is also stated by learned counsel that against the judgment and decree dated 03.02.2017 passed by trial Court, neither any appeal was preferred by the appellant, nor in the appeal filed by defendants No.2 and 3 any cross objections were filed by the appellant or his father, though the said appeal was contested by them.

After hearing the learned counsel and considering the submissions, this Court finds that the trial Court had framed specific issue No.2 that whether Tarawati (mother of the plaintiffs) executed a registered Will in favour of respondent No.4 qua her share, but on the said issue, no evidence was adduced by the parties. Of course, the plaintiffs claimed the Will to be a forged document and similar was the stand of defendant Nos.2 and 3, who supported them on this issue, but the appellant/defendant No.4 or his father failed to put any contest, much less proving the Will in their favour, the trial Court proceeded to decide the said issue against the appellant and in favour of the plaintiffs.

Further, the appellant did not prefer any appeal against the

judgment and decree passed by trial Court or pressed any argument in the appeal filed by defendant Nos.2 and 3, thus, this Court has no hesitation in holding that the appellant cannot raise the issue relating to the Will at the stage of the second appeal. A perusal of the impugned judgment and decree passed by both the Courts reveals that the same are based upon the correct appreciation of evidence and material on record, and do not suffer from perversity.

No other argument is raised.

Resultantly, finding no merit in this appeal, much less involvement of any substantial question of law, the same is dismissed.

14.12.2022
Jasmine Kaur

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No