

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-5533 of 2016(O&M)

Date of decision: 08.07.2022

Vijay Kumar

...Appellant

Versus

Ashok Kumar and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rajeev Gupta, Advocate, for the appellant.

Mr.P.K.Ganga, Advocate, for respondent no.2

ANIL KSHETARPAL, J (Oral)

While questioning the correctness of the concurrent judgments passed by the courts below, the defendant has filed the present appeal. The plaintiff's suit for grant of decree of mandatory injunction directing the defendant to hand over the vacant possession of House No.671/1-A, Ram Bagh Road, Kacha Bazar, Ambala Cantt as also for recovery of mesne profit @ Rs.5000/- per month has been decreed. It has come on record that initially, the property was jointly owned by Sh. Amar Nath, Sh. Laxmi Chand, Sh. Banarsi Dass and Sh. Shankar Dass. There was an instrument of partition drawn between the aforesaid 4 persons, on 19.10.1964, which was registered on 12.01.1965. As per the aforesaid partition deed, House No.670 fell in the share of Sh. Laxmi Chand, and House No.671/1-A fell in the share of Sh. Banarsi Dass.

The defendant before this court is the son of Sh. Banarsi Dass. It is the case of the plaintiff that after partition of the property, Sh. Banarsi Dass requested his brother Sh. Laxmi Chand to permit him to use the first

floor of the said house which has now been assigned no.671/1-A. Sh. Laxmi Chand acceded to the request of his brother. Sh. Laxmi Chand bequeathed the property in favour of the children of Sh. Amar Nath. After terminating the licence, the children of Sh.Amar Nath, filed a suit.

The defendant contested the suit claiming that the property is joint and the Will executed by Sh. Laxmi Chand is fabricated. Defendant claims to be owner of the property.

Both the courts decreed the suit after recording a finding that the partition deed as well as the Will in favour of the plaintiff is proved.

This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

The learned counsel representing the appellant contends that this partition deed has not been discussed by the trial court.

From a perusal of the trial court record, it is evident that this document is exhibited as PW3/A. Both the courts have relied upon the document before returning the finding that the property was partitioned.

As regard the validity of the Will, the attesting witness Sh. Sunil Kumar has been examined . His evidence has been found to be acceptable by both the courts below.

In view thereof, no ground to interfere is made out.

Dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

July 08, 2022
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(ANIL KSHETARPAL)
JUDGE

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