

In the High Court of Punjab and Haryana, at Chandigarh

1. Regular Second Appeal No. 3549 of 2018 (O&M)

Krishan Devi and Others

... Appellant(s)

Versus

Ravi Bhushan

... Respondent(s)

AND

2. Regular Second Appeal No. 3680 of 2018 (O&M)

Ravi Bhushan

... Appellant(s)

Versus

Krishan Devi and Others

... Respondent(s)

DATE OF DECISION: 07.04.2022

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Parvinder Singh, Advocate
for the appellants(In RSA-3549-2018) and
the respondents (In RSA-3680-2018).

Mr. Arjun Kundra, Advocate
for the respondent (In RSA-3549-2018) and
the appellant (In RSA-3680-2018).

Anil Kshetarpal, J.

1. This judgment shall dispose of two connected regular second appeals, which are arising from one suit disposed of by the trial Court as well as the First Appellate Court by a common judgment. In fact, the First Appellate Court disposed of two separate appeals filed by the plaintiff as well as the defendants.

Some facts are required to be noticed.

3. Ravi Bhushan (the plaintiff-appellant in RSA-3680-2018) filed a suit for grant of decree of declaration that Ramji Dass was initially residing with him in village Manauli, Tehsil and District S.A.S. Nagar and subsequently in village Raipur Rani, District Panchkula. He claims that Ramji Dass is missing since 1966. The plaintiff claims that he is owner in possession of the land measuring 8 biswas. He further claims that Ramji Dass was unmarried and had executed an unregistered Will dated 02.04.1965 in his favour. The defendants contested the suit while asserting that Ramji Dass may be the owner of the property. However, their predecessor-in-interest took over the possession in the year 1952 and hence, they have perfected their title by way of adverse possession. Both the Courts below dismissed the suit after recording the findings of fact to the effect that the alleged Will is surrounded by the suspicious circumstances.

4. Heard the learned counsel representing the parties, at length and with their able assistance, perused the paper book.

5. The learned counsel representing the defendants-Krishan Devi and Others (appellants in RSA-3549-2018) contends that their possession is established from the year 1952. He submits that the aforesaid fact is corroborated by the revenue record (Ex.D1 to Ex.D8) and therefore, both the Courts below have wrongly dismissed the suit.

6. On the other hand, the learned counsel representing Ravi Bhushan contends that the Will was proved by examining both the attesting witnesses, namely, PW.2 Dharam Pal and PW.3 Jai Parkash. Hence, he contends that both the Courts below have erred in dismissing the suit.

7. This Bench proceeds to examine the argument of the learned counsel representing Krishan Devi and Others (defendants in the suit). A mere long possession is not sufficient to prove that someone has perfected his/her title by way of adverse possession. The defendants are required to prove that their possession is actual, open, hostile, continuous and exclusive. They are also required to prove that their entry in the possession was not permissive. Moreover, Ramji Dass is not party to the suit. As per the revenue record, he is the owner. In such circumstances, both the Courts below have

correctly refused to record a finding that the defendants have perfected their title by way of adverse possession.

8. Now this Bench proceeds to take up another appeal i.e. RSA-3680-2018. Both the Courts below have recorded that both the witnesses have themselves stated that they did not sign the Will in the presence of each other or Ramji Dass had signed the Will in their presence. PW.3 Jai Parkash (one of the attesting witness) has admitted that he has not seen Ramji Dass, the alleged executant. PW.2 Dharampal, another attesting witness of the Will, has stated that the alleged will was scribed on a stamp paper, which is factually incorrect. Furthermore, Ravi Bhushan (the plaintiff) is proved to have participated in the execution of the Will. He has stated that he got the thumb impression of Ramji Dass while he was lying on the cot. Moreover, it is not disputed that the plaintiff and the defendants are related to each other.

9. In view of the above, no ground is made out to interfere. Hence, both the appeals are dismissed.

10. The miscellaneous application(s) pending in both the appeals, if any, shall stand disposed of.

**(Anil Kshetarpal)
Judge**

April 07, 2022
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No