

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

RSA No.4446 of 2018(O&M)

Date of decision:14.03.2022

Ram Kishan

...Appellant

Versus

Khem Chand

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

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

ANIL KSHETARPAL, J (Oral)

The hearing of the case is being held through video conferencing on account of restricted functioning of the Courts.

The appellant is the plaintiff in a suit filed for grant of a decree of declaration to the effect that the plaintiff is exclusive owner in possession of the portion marked with letters ABCD shown in the red colour in the site plan. The plaintiff also claims that the Will dated 27.01.2010 executed in favour of the defendant is null, void and not binding upon the rights of the plaintiff..

While filing the suit, the plaintiff claims that he, along with his brothers Ganga Ram, Pyare Lal and Panna Lal, was joint owner in possession of a residential house and in a family settlement, the plaintiff has become owner in possession of the property.

The defendant, while contesting the suit, claimed that the plaintiff is not the owner, whereas, the defendant is the absolute owner of the property.

The defendant claims that late Smt. Somoti, widow of Mannu bequeathed the property in dispute in favour of the defendant vide Will dated 27.01.2010. The trial court decreed the suit, whereas the first Appellate Court on re-appreciation of the evidence reversed the judgment and decree passed by the trial Court.

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

The learned First Appellate Court has recorded the following reasons while accepting the appeal:-

- (1) The plaintiff has produced no evidence to prove that the property in question was previously owned by him and his brothers. No sale deed or other document has been produced to prove that fact.
- (2) The plaintiff has failed to prove that the aforesaid property was inherited by them from his forefathers. The plaintiff has also failed to produce any record from the Municipal Committee in order to prove entry in his or in favour of his brothers.
- (3) The dimensions and area of the entire house has not been disclosed.
- (4) The execution of the Will has been proved by examining the scribe as well as the attesting witnesses as Ex.DW2.

The will has also been proved by examining DW3.

The learned counsel representing the appellant contends that the first Appellate Court has erred while accepting the appeal. He contends that the Court has wrongly observed that the plaintiff has no locus standi to

challenge the validity of the Will.

The argument of the learned counsel appears to be *prima-facie* attractive. However, on careful reading of para 16 of the judgment passed by the first Appellate Court, it is evident that the first Appellate Court has not observed that the plaintiff has no locus standi to challenge the validity of the Will executed by his brother. In fact, the first Appellate Court has observed that the plaintiff does not claim ownership on the basis of natural succession. By filing the suit, the plaintiff has claimed that the property in dispute has fallen to his share on the basis of a family settlement. The plaintiff has failed to prove that fact.

Moreover, the defendant-Khem Chand is not a stranger. He is grand son of Smt. Somoti. The execution of the Will has been proved in accordance with Section 68 of the Indian Evidence Act, 1872.

The scope of interference while hearing a Regular Second Appeal is limited. The first Appellate Court, on re-appreciation of evidence, has recorded a finding of fact. The learned counsel representing the appellant has failed to draw the attention of the Court to any substantive error in the same.

Hence, no ground to interfere is made out.

Dismissed.

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

**March 14, 2022**  
**nt**

**(ANIL KSHETARPAL)**  
**JUDGE**

**Whether speaking/reasoned : Yes/No**

**Whether reportable : Yes/No**