

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA-3836-2016(O&M)
Date of Decision: 22.11.2023

Pardeep Luthra and others

...Appellants

Versus

Narinder Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. G.S. Sirphikhi, Advocate for the appellants.

HARKESH MANUJA, J. (Oral)

1. By way of present appeal, challenge has been made to the judgments and decrees dated 24.12.2014 and 26.11.2015 passed by the Courts below, whereby suit for declaration, filed at the instance of respondents, claiming themselves to be co-sharers/co-owners being in joint possession to the extent of 2/3rd share of the suit property, previously owned by their predecessor in interest i.e. Dina Nath (grandfather), came to be decreed.

2. Briefly stating, claiming themselves to be successors in interest of deceased-Dina Nath, respondents-plaintiffs based on natural inheritance, filed a suit for declaration, being in joint possession of the house in question bearing No. B-XIV/245 situated at Mohalla Valmiki, outside Khajuri Gate, Batala, District Gurdaspur. Prayer was opposed by the appellants-defendants while relying upon registered Will dated

15.04.2006 executed by Vidya/Vidhya widow of Ram Lubhaya (one of the three sons of deceased-Dina Nath) in favour of appellant-defendant No.1 (Pardeep Luthra). Based thereupon, alienated the same in favour of appellant No.5-defendant No.6 (Kiran Luthra) vide registered sale deed dated 17.10.2007 was also pleaded and thus, it was stated that the plaintiffs-respondents were left with no right, title and interest over the house in question.

3. The trial Court vide judgment and decree dated 24.12.2014 decreed the suit in favour of respondents-plaintiffs declaring them to be co-owners in joint possession to the extent of 2/3rd share of the suit property. Aggrieved thereof, the appellants filed first appeal, however, the same came to be dismissed by the First Appellate Court vide judgment and decree dated 26.11.2015.

4. Impugning the aforementioned judgments and decrees passed by the Courts below, learned counsel for the appellants submits that the factum of suit property being owned by deceased-Dina Nath was never proved on record as the only evidence in this regard was the entries of house tax assessment register, which could not have been taken as proof of his right, title and interest over the suit property. He further submits that based on the registered Will dated 15.04.2006 executed by Vidya/Vidhya, widow of Ram Lubhaya, the suit property was alienated in favour of appellant No.5-defendant No.6 vide registered sale deed dated 17.10.2007, who thus became exclusive owner in possession of the suit property.

5. I have heard learned counsel for the parties and gone through the paper-book. I am unable to find substance in the submissions made on behalf of the appellants.

6. In the present case, admittedly, from the record it can be discerned that the property in question in the house tax assessment register was recorded to be in the name of deceased-Dina Nath along with his three sons, namely, Ram Kishan, Harnam Dass and Ram Lubhaya, being in occupation thereof. The house tax assessment register was proved on record as Exs. P1 to P3 pertaining to the year 1986 to 2013. Though the house tax assessment register cannot be taken to be as the sole proof of ownership over the suit property, yet in the peculiar facts and circumstances of the present case, especially when neither deceased-Dina Nath, nor any of his three sons, during their life-time ever challenged those entries, inference needs to be drawn that the suit property belonged to all four of them, jointly. Otherwise also, in a civil dispute the appreciation of evidence has to be based on preponderance of probabilities which clearly falls in favour of respondent-plaintiffs.

7. Moreover, no document was ever produced on record, so as to show how Vidya/Vidhya, widow of Ram Lubhaya became owner of the suit property thereby executed registered Will dated 15.04.2006 in favour of appellant-defendant No.1 by creating rights thereunder. Still further, even the said registered Will dated 15.04.2006 was never produced or proved on record and thus, merely on the basis of

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registered sale deed dated 17.10.2007 allegedly executed by appellant-defendant No.1 in favour of appellant-defendant No.6, their stand was rightly discarded for the purpose of non-suiting the respondent-plaintiffs.

8. In view of the discussion made hereinabove, finding no illegality or perversity with the concurrent findings of facts recorded by the Courts below, there being no overlooking of the material available on record, re-appreciation of pleadings and the evidence being impermissible, the present appeal being devoid of merits is thus dismissed.

9. Pending application(s), if any, shall stand(s) disposed of.

22.11.2023

Mangal Singh

**(HARKESH MANUJA)
JUDGE**

Whether Speaking / Reasoned :	Yes	No
Whether Reportable :	Yes	No