

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA-2546-2017 (O&M)

Date of Decision: August 31, 2023

**MUNSHI RAM POPLI DECEASED THROUGH KAMLESH RANI AND
ORS** Appellants

Versus

VIRENDER KUMAR POPLI AND ORS Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Shyam Singh Chhokar, Advocate for the appellants.

HARKESH MANUJA, J. (ORAL)

By way of present appeal, challenge has been made to judgments and decrees dated 14.05.2011 and 09.03.2016 passed by the Courts below whereby a suit for declaration along with mandatory injunction filed at the instance of appellants-plaintiffs has been dismissed.

2. Briefly stating, the appellants-plaintiffs filed a suit for declaration and mandatory injunction claiming to be legal heirs of deceased-Ram Chander. The suit property comprised of residential house besides three shops. Admittedly, the residential house was owned by the father, whereas, the three shops were owned by the mother of the plaintiffs-defendants. The grievance of the appellants-plaintiffs before the trial Court was against the Will dated 04.10.1999 whereby a portion of house and the three shops were bequeathed in favour of respondent No.1. The plea taken in the plaint by appellants-plaintiffs was that house in question was owned by father namely Ram Chander which after his death was though inherited by all the legal heir as per natural succession but was got recorded in the name of mother and thus the mother had no authority to bequeath the same in favour

of respondent No.1.

3. Upon notice, written statement was filed wherein it was submitted that after the death of their father, the portion of house was got recorded in the name of mother with the consent of all the legal heirs in terms of a settlement and therefore, she was fully competent to bequeath the same in favour of respondent no.1. It was also submitted that three shops were exclusively owned by the mother and thus there was no legal impediment about execution of Will regarding the same.

4. The trial Court vide its judgment and decree dated 14.05.2011 dismissed the suit filed by the appellant-plaintiff. Aggrieved thereof, the appeal was filed which also came to be dismissed vide judgment and decree dated 09.03.2016 passed by the First Appellate Court.

5. Impugning the aforementioned judgments and decrees, learned counsel for the appellant submits that the house in question was in the name of father i.e. Ram Chander. It was never got partitioned and was thus wrongly recorded in the name of mother who had no exclusive right over the same after the death of the father as the same was to be inherited by all the legal heirs as per natural succession. He further submits that the execution of Will qua the house by the mother was without authority and beyond her competence.

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

7. No doubt, the house was originally owned by the father

namely Ram Chandra, however, the plaintiff while appearing as PW3 himself admitted that during his lifetime, the father got it divided/partitioned and two separate house tax entries for two separate portions thereof were got incorporated. This partition has also been established from the factual position that the plaintiff was in exclusive possession of one of the portions of the house in question since the lifetime of his father. On appreciation of the evidence available on record, it has been found by the Courts below that there were two separate portions of house and both were separately assessed as two separate units even by the Municipal Corporation and thus the portion of house which was bequeathed by mother in favour of respondent No.1 was in fact has own separate share. This fact further finds strength from the consistent conduct of the sisters who, though were impleaded as party to the present litigation but never came forward to claim themselves to be successors in the said house being heris of father-Ram Chander, knowing fully well that the same already stood partitioned among the brothers even during lifetime of their father and separate portions were occupied by the two brothers. Regarding three shops which were exclusively owned by the mother, nothing has been pointed out to question her entitlement to bequeath the same.

8. In view of the discussions made hereinabove, finding no merits in the present appeal, besides there being no illegality or perversity in the judgments passed by the Courts below, the present appeal is hereby dismissed.

31.08.2023
tejwinder

(HARKESH MANUJA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>