

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

RSA-6128-2017 (O&M)
Reserved on:- 16.08.2023
Pronounced on:- 09.10.2023

Piyush Bhatnagar alias Andrew Bhatnagar and others

....Appellants

Versus

Varsha Trehan alias Varsha Bhatnagar and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE AMARJOT BHATTI

Present:- Mr. Rakesh Gupta, Advocate
for the appellants.

AMARJOT BHATTI, J.

1. The appellants/defendants No. 1 to 4 have filed the present Regular Second Appeal against judgment and decree dated 15.02.2017 passed by learned Additional District Judge, SAS Nagar, Mohali vide which the appeal preferred by them was dismissed by upholding the judgment and decree dated 29.11.2013 passed by the learned Civil Judge (Junior Division), SAS Nagar, Mohali vide which the suit filed by the plaintiff Varsha Trehan @ Varsha Bhatnagar was decreed.

2. The facts of the case are that Varsha Trehan @ Varsha Bhatnagar filed suit for declaration with consequential relief of possession and partition of the suit property with mandatory injunction directing defendant No. 5 to transfer the suit property in the name of plaintiff and defendant No. 1 Piyush Bhatnagar @ Andrew Bhatnagar in equal shares along with recovery of arrears of mesne profit with future interest. It is the case of plaintiff that she has got half share in House No. HIG-768 B, Phase-IX, Mohali along with her brother defendant No. 1 who is also

RSA-6128-2017 (O&M)

Resident Indian settled in America along with her husband. She appointed Sh. Ravi Tehan as her Special Power of Attorney to pursue her case. The suit property was previously owned by their father namely Rashik Behari Bhatnagar who died on 22.03.1994. Their mother had already expired on 13.01.1994. Therefore, the plaintiff and defendant No. 1 are the only legal heirs of late Rashik Behari Bhatnagar. Their father died intestate, therefore, the plaintiff and defendant No. 1 are entitled to inherit this property on the basis of natural succession. The defendant No.1 had told the plaintiff that the property will be transferred in their favour in equal shares. The defendant No. 1 let out the suit property to defendants No. 2 to 4 on rent. The plaintiff was paid rent to the extent of her share by defendant No. 1 till September, 2004 and thereafter, he stopped making payment of rent. She inquired the matter from her relatives in India and she came to know that the defendant No.1 through his attorney, defendant No. 2 had applied for the transfer of ownership of suit property in his favour on the basis of Will dated 26.06.1991. The plaintiff gave representation to GMADA for transferring the ownership in her favour and in favour of defendant No.1 to the extent of $\frac{1}{2}$ share each. On the inspection of record of defendant No. 5, it came into light that the application for transfer was filed along with one affidavit and indemnity bond of Mohinder Singh. The Power of Attorney was in favour of Ram Singh son of Mohinder Singh, allegedly executed by defendant No. 1. There was no Power of Attorney in the name of Mohinder Singh and there was no copy of impugned Will. The father of plaintiff never intended to exclude her from the property. The Will, if any, is forged and a result of fraud and misrepresentation. It is surrounded by suspicious circumstances.

The mother of plaintiff was alive on 26.06.1991 who expired on

RSA-6128-2017 (O&M)

Will in favour of his son who was residing in USA. The said Will is illegal, null and void and it cannot be relied upon. The defendant No. 1 cannot claim exclusive ownership of the suit property. The plaintiff has claimed mesne profit at the rate of Rs. 5,000/- per month from October, 2004 and the arrears comes out to Rs. 1,75,000/- with interest at the rate of 8% per annum i.e. Rs. 4200/- and future rent @ Rs. 5,000/- per month during the pendency of the case. The plaintiff tried to resolve the matter with the defendants in order to avoid litigation but all her efforts failed. The defendants No. 2 to 4 are in possession of this property as tenants. They have refused to pay the rent to her. The plaintiff being co-owner is entitled to seek the relief of possession against defendants No. 2 to 4. Ultimately, the present suit was filed.

3. Notice of the suit was given to the defendants. The defendant No.1 filed written statement through his Attorney Mohinder Singh, whereas, the defendants No. 2 to 4 also filed their written statement jointly. In both the written statements, they had taken the same stand alleging that the plaintiff had no share, title or any right in the property left behind by late Rashik Behari Bhatnagar. The father of defendant No. 1 during his life time had given the house in dispute to him and the cash lying in the Post Office was given to the plaintiff in lieu of her share in the house. Sh. Rashik Behari Bhatnagar was suffering from Cancer and he remained in PGI, Chandigarh during his last days. He had appointed the plaintiff as a nominee in MIS in the Post Office, Mohali. The plaintiff expressed her desire in the presence of defendant No. 4 to take the money in lieu of share in the house in dispute because 65-70 installments were yet to be paid to PUDA. The plaintiff withdrew the entire amount after the death of their father. The present suit has been filed by some mischievous

RSA-6128-2017 (O&M)

authenticated by the plaintiff herself. The plaintiff has no share, title or interest in the suit property. The plaintiff is settled in America. The defendant No. 1 never told the plaintiff that the property will be transferred in their favour in equal shares. The defendant No. 1 had delivered possession of the suit property to defendants No. 2 to 4 being bonafide purchasers. There was no question of taking rent from them. It was denied that the plaintiff was given rent up to September, 2004. The defendant No. 1 had executed registered General Power of Attorney dated 06.07.1999 in favour of defendants No. 2 and 3. They had applied for transfer of ownership of the house in dispute in the name of defendant No. 1 on 27.11.2000. It was informed by PUDA vide letter dated 16.06.1992 that the allotment of the house was cancelled on account of illegal construction. The allotment was again restored vide order dated 05.08.2004 passed by Additional Chief Administrator, PUDA, SAS Nagar, Mohali. The defendants No. 2 and 3 applied for the transfer of house in the name of defendant No. 1 and notice was issued twice through publication. In view of the affidavit and conduct of father of the plaintiff, it was clear that she was left with no share or any title in the house in dispute. The defendant No. 1 had deposited balance installments to the tune of Rs. 67,050/-after the death of their father. The defendant No. 1 was the owner of the house and the defendants No. 2 to 4 are the bonafide purchasers, since 06.07.1999. It was prayed by the defendants No. 1 to 4 that suit filed by the plaintiff may kindly be dismissed with costs.

4. The defendant No. 5 also filed separate written statement taking the stand that the present suit is an abuse of process of law. The House No. HIG-768 B, Phase-IX, SAS Nagar, Mohali was allotted to late Sh. Rashik Behari Bhatnagar vide allotment letter No. 17344-46 dated

Bhatnagar. It is admitted that he has expired on 22.03.1994 as per the Death Certificate placed on record. It is admitted that defendant No. 1 through his General Power of Attorney holder Mohinder Singh applied for the transfer of ownership of the house in his favour on the basis of one affidavit dated 26.06.1991 (alleged Will). The Power of Attorney holder of defendant No. 1 was told to get a decree of competent Court regarding his claim as the answering defendant doubted the genuineness of so-called Will. It is admitted that the plaintiff had made representation to transfer half share in her name. The department asked the plaintiff to appear in person before the authority regarding her claim. She authorized one R.P.S. Bedi for correspondence. He was also told to appear before the office to answer regarding their claim but nobody turned up. The other facts were denied by defendant No. 5 for want of knowledge and it was prayed that the suit filed by the plaintiff may kindly be dismissed with costs.

5. No replication was filed. From the pleadings of the parties, following issues were framed by the trial Court on 25.11.2011:-

(1) *Whether plaintiff is entitled for declaration as prayed for?*

OPP

(2) *Whether the plaintiff is entitled for recovery of mesne profits, if so at what rate and from which date?*

OPP

(3) *Whether the plaintiff is entitled for possession by way of partition?*

OPP

(4) *Whether the suit is properly valued for the purpose of Court fees?*

OPD

(5) *Relief.*

Subsequently, vide order dated 29.11.2013, the following additional issue was framed :-

1A. *Whether the plaintiff is entitled for mandatory injunction as prayed for?*

OPP

6. In order to prove the suit, the plaintiff examined Anil Kumar as PW-1 and Sukhdeep Singh Brar, Clerk, PUDA GMADA and closed the evidence.

In order to rebut the case of the plaintiff, defendant No. 2 Mohinder Singh himself stepped into the witness box as DW-3 and defendant No. 4 Paramjeet Singh also stepped into the witness box as DW-4. The defendants also examined Harvinder Singh Verka as DW-1, Vijay Kumar, Registry Clerk as DW-2 and Sukhdeep Singh Brar, Clerk, Estate Office, GMADA as DW-5 and closed the evidence.

The defendant No. 5 did not led any evidence.

7. In rebuttal evidence, learned counsel for plaintiff tendered document i.e. photo copy of Attorney dated 17.09.2013 Ex. PX and closed the rebuttal evidence.

8. After hearing the arguments advanced by learned counsel for both the parties, the suit filed by the plaintiff was decreed with costs vide judgment and decree dated 29.11.2013. Feeling aggrieved of this judgment and decree, the defendants filed Civil Appeal No. 92 of 24.12.2013/20.02.2014 which was dismissed vide judgment and decree dated 15.02.2017. Feeling aggrieved of this judgment and decree, the present Regular Second Appeal has been filed.

9. I have heard the arguments advanced by learned counsel for the appellants and have gone through the trial Court record with his able assistance.

The present appeal has been filed by Piyush Bhatnagar alias Andrew Bhatnagar, Mohinder Singh, Ram Singh and Paramjeet Singh, the appellants/defendants No. 1 to 4. The perusal of grounds of appeal indicates that Piyush Bhatnagar alias Andrew Bhatnagar – appellant No. 1

RSA-6128-2017 (O&M)

appellant No. 1. The grounds of appeal further indicates that the appellants No. 2 to 4 are claiming themselves to be the bonafide purchasers of the property in question. The learned counsel for the appellants assailed the impugned judgments firstly on the ground that Varsha Trehan alias Varsha Bhatnagar did not stepped into the witness box to prove her own version. It is further claimed that there is no evidence on record to establish the relationship of respondent No. 1/plaintiff with late Sh. Rashik Behari Bhatnagar. It is further claimed that the respondent No.1/plaintiff has got no relationship with Anil Kumar, the said Power of Attorney holder nor he is associated with her in any manner. Infact, he is a Clerk to Sh. B.S. Bedi, Advocate. Therefore, Anil Kumar PW-1 was not a competent person to appear in the Court being Power of Attorney holder of the respondent No. 1 – plaintiff.

The learned counsel for the appellants further pointed out that the learned Courts below have wrongly rejected the plea of appellants No. 2 to 4 being bonafide purchasers for valuable consideration. In this case, Mohinder Singh DW-3, Paramjeet Singh DW-4 have stepped into the witness box to confirm that they had purchased the house in question after making payment to proforma respondent i.e. appellant no. 1/defendant No.1. The son of Sh. Rashik Behari Bhatnagar was also settled in USA. He had specially come to India to execute documents in their favour. The General Power of Attorney was executed by Piyush Bhatnagar in the year 1999 and since then, they are in actual physical possession of the house in question. They had purchased the property in question in a sum of Rs. 6 lacs which were given to Piyush Bhatnagar and thereafter, they had deposited another sum of rs. 4,32,306/- with PUDA authorities. There is ample evidence on record to establish that the appellants No. 2 to 4 are

the Courts below are liable to be set aside.

It is further pointed out that the two Courts below further over-looked the fact that late Sh. Rashik Behari Bhatnagar during his lifetime had executed an affidavit dated 26.09.1991 in favour of his son Piyush Bhatnagar alias Andrew Bhatnagar, which is placed on record by the plaintiff herself as Ex.PW2/7. Even if the said affidavit could not be considered technically as a 'Will', but at the same time the appellants No.2 to 4 are bonafide purchasers for consideration. The said affidavit fully confirms the stand taken by the appellant No. 1/defendant No. 1. Therefore, the facts of the case and the evidence on record were not rightly considered by the Courts below. Therefore, the impugned judgment dated 15.02.2017 passed by learned Additional District Judge, SAS Nagar, Mohali, upholding the judgment and decree dated 29.11.2013 passed by learned Civil Judge (Junior Division), SAS Nagar, Mohali is liable to be set aside and the suit filed by the respondent No. 1/plaintiff is liable to be dismissed.

10. I have considered the arguments advanced before me and I have also carefully considered the oral evidence and the documents relied upon by the parties before the trial Court. The facts of the case indicate that Varsha Trehan alias Varsha Bhatnagar filed the present suit seeking declaration that she has got $\frac{1}{2}$ share along with her brother Piyush Bhatnagar alias Andrew Bhatnagar, who is also having $\frac{1}{2}$ share in the House No. HIG-768 B, Phase-IX, Mohali, which was previously owned by their father late Sh. Rashik Behari Bhatnagar. Along with the present suit for declaration, she filed suit for partition claiming separate possession and also relief of mandatory injunction directing the defendant No. 5 to transfer the suit property in the name of plaintiff and defendant No. 1 in

RSA-6128-2017 (O&M)

in the case in hand, the dispute is regarding House No. HIG-768 B, Phase-IX, Mohali. It is the case of both the parties that his property was allotted to late Sh. Rashik Behari Bhatnagar. The plaintiff examined Sukhdeep Singh Brar, Clerk, PUDA GMADA, SAS Nagar, Mohali as PW-2 who has proved on record the allotment letter in the name of Sh. Rashik Behari Bhatnagar, which is Ex.PW2/1. This fact is also confirmed by the appellants/defendants. The dispute started regarding the inheritance of house bearing No. HIG-768 B, Phase-IX, Mohali, after the death of Sh. Rashik Behari Bhatnagar, who expired on 22.03.1994. Sukhdeep Singh Brar, Clerk, PW-2 has also placed on record the copy of Death Certificate of Rashik Behari Bhatnagar, which is Ex.PW2/6. As per the case of plaintiff Varsha Trehan alias Varsha Bhatnagar, she along with her brother Piyush Bhatnagar alias Andrew Bhatnagar are the children of late Sh. Rashik Behari Bhatnagar. It is further not disputed that their mother died on 13.01.1994, prior to the death of their father. During the course of arguments referring the grounds of appeal, it was claimed that the plaintiff has failed to lead any evidence to show that Varsha Trehan alias Varsha Bhatnagar is the daughter of late Sh. Rashik Behari Bhatnagar. There is statement of Mohinder Singh DW-3 as well as Paramjeet Singh DW-4, who during their cross-examination admitted the fact that the plaintiff is daughter of late Sh. Rashik Behari Bhatnagar and during the lifetime of her father, she was having cordial relations with them. Therefore, this stand taken by the appellants in the grounds of appeal does not hold any ground. Once, it is established that the plaintiff and defendant No. 1 are the children of late Sh. Rashik Behari Bhatnagar, who was owner of property in dispute, then in the natural course the property is to be inherited by way of natural succession or otherwise, in case late Sh. Rashik Behari

Bhatnagar executed any document in the shape of Will etc in favour of one

RSA-6128-2017 (O&M)

of the sibling. The plaintiff has come to the Court on the basis of natural succession, whereas the appellant No. 1/defendant No. 1 Piyush Bhatnagar alias Andrew Bhatnagar has come to the Court on the basis of one family settlement, whereby the plaintiff had agreed to take the cash amount standing in the name of their father and she left her claim in the property in dispute which allegedly came to the share of appellant No. 1/defendant No. 1. Therefore, the onus was heavily on the appellant No. 1/defendant No. 1 to prove the said family settlement. Firstly, the defendant No. 1 has not stepped into the witness box in his personal capacity. Mohinder Singh being Power of Attorney holder has stepped into the witness box as DW-3. His testimony pertaining to alleged family settlement cannot be safely relied upon. There is no writing pertaining to the family settlement vide which the plaintiff or defendant No. 1 had settled their claim regarding the movable and immovable property belonging to their father. Therefore, in the absence of any such document or evidence on record, it cannot be said that the respondent No. 1/plaintiff relinquished her claim in the house in question.

11. The appellants/defendants are also relying upon one affidavit dated 26.06.1991, though this affidavit is not specifically mentioned in the written statement filed by appellant No. 1/defendant No. 1. It is admitted by Sukhdeep Singh Brar, Clerk PW-2 that defendant No. 1 through Power of Attorney holder Mohinder Singh filed application dated 27.11.2000 Ex.PW2/2 regarding transfer of property standing in the name of Sh. Rashik Behari Bhatnagar in the name of Piyush Bhatnagar alias Andrew Bhatnagar and along with this application, one affidavit dated 26.06.1991 Ex.PW2/7 was relied upon. The aforesaid affidavit is not produced on record by respondent No. 1/plaintiff, rather this document came on record

when the statement of Sukhdeep Singh Brar, Clerk PW-2 was recorded. It

RSA-6128-2017 (O&M)

is rightly held by the Courts below that this affidavit cannot be treated as Will of Sh. Rashik Behari Bhatnagar. This fact is also conceded by the appellants in the grounds of appeal. The contents of this affidavit show that Dr. Piyush was referred as only son and sole heir by the executant of said affidavit and there is no reference of respondent No. 1/plaintiff who is also daughter of late Sh. Rashik Behari Bhatnagar nor there is reference of his wife who was alive at that time. In this affidavit, there is reference of bank deposits but there is no reference of any family settlement arrived at between respondent No.1/plaintiff and appellant No.1/defendant No. 1. Therefore, the affidavit which was placed on record before defendant No.5 for the transfer of suit property in the name of appellant No. 1/defendant No. 1 was rightly not relied upon by defendant No. 5. There is nothing on record to show that late Sh. Rashik Behari Bhatnagar bequeathed the house in dispute in favour of his son alone by executing a Will. In the absence of proof regarding family settlement as well as in the absence of any testament in favour of appellant No. 1/defendant No. 1, it cannot be said that he alone is entitled to inherit the suit property left behind by his father Sh. Rashik Behari Bhatnagar. Under these circumstances, the appellant/defendant No. 1 Piyush Bhatnagar alias Andrew Bhatnagar and respondent No. 1/plaintiff Varsha Trehan alias Varsha Bhatnagar will inherit the suit property in equal shares on the basis of natural succession. The findings given by the Courts below on this point do not require any interference.

12. The appellants No. 2 to 4/defendants No. 2 to 4 claimed themselves to be the bonafide purchasers of the property in dispute, having purchased the same from appellant No. 1/defendant No. 1 Piyush Bhatnagar alias Andrew Bhatnagar. There is no evidence on record except

appellant No. 1/defendant No. 1. Mohinder Singh DW-3 during his cross-examination claimed that there was an agreement entered between him and defendant No. 2 and thereafter he denied to have any written agreement to sell. There is nothing on record to show that appellant No.1/defendant No.1 received Rs. 6 lacs from the appellants No. 2 to 4/defendants No. 2 to 4. In the absence of any evidence on record, the stand taken by the appellants No. 2 to 4/defendants No. 2 to 4 regarding bonafide purchasers does not hold any ground. Therefore, the stand taken by the aforesaid appellants No. 2 to 4/defendants No. 2 to 4 was rightly rejected by the Courts below.

Considering the evidence on record, the facts and the legal position was rightly considered by the Courts below and I do not find any reason to dis-agree with their verdict. Therefore, the concurrent judgments of two Courts below are accordingly, upheld and the appeal preferred by the appellants/defendants is accordingly, dismissed. The photocopy of records received from the two Courts below be sent back to the concerned quarter.

Pending application(s) if any, also stands disposed of.

09.10.2023

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(AMARJOT BHATTI)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes
Yes/No