

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

109 RSA No.936 of 2018 (O&M)

Sahil

....Appellant

Versus

Vijay and others

....Respondents

RSA-1898 of 2018(O&M)

Sahil

....Appellant

Versus

Vijay Kumar

....Respondent

Date of Decision: 11.09.2023

CORAM:HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Ajit Singh, Advocate for
Mr. Ankti Aggarwal, Advocate
for the appellant(s) (in both the appeals).

SANJAY VASHISTH, J.(Oral)

1. Present appeals i.e. RSA No.936-2018 and RSA No. 1898 of 2018 are taken up together, as the same are arising from two civil suits (i.e civil Suit No.817 of 2012 and civil suit no.450 of 2012), but qua the one and same question i.e. Will No.39 dated 24.04.2006 executed in favour of Sahil-defendant No.1 (in Civil Suit No.817 of 2012).

2. Vijay Kumar s/o Late Rattan Singh executor/testator of

the Will No.39 dated 24.04.2006, filed civil suit No.817 dated 2012 for seeking a decree of declaration alongwith the consequential relief for permanent injunction against appellant/defendant No.1 Sahil s/o Bharat Bhushan.

3. Declaration was sought by plaintiff-Vijay Kumar by way of civil Suit No.817 of 2012 against Sahil-defendant No.1 that Will No.39 dated 24.04.2006 executed in favour of said Sahil (defendant No.1) is illegal, null, void and not binding upon the plaintiffs and defendants No. 2 and 3.

4. By way of civil suit No.450 of 2012, plaintiff-Sahil s/o Bharat Bhushan sought partition of the property i.e. Shop No.11,situated in Bhagat Singh Market Railway road, Karnal, claiming himself to be owner of the same by virtue of Will in question.

5. Both the Courts below have given a categoric finding that as per the evidence available on record, the shop in question belongs to Improvement Trust, Karnal, being its owner and Rattan Singh was occupying the same in the capacity of a tenant only. Even PW2- Pal Singh, Secretary of Improvement Trust, Karnal, appeared and proved that there is no right with Rattan Singh and the property is recorded in the name of the Improvement Trust, Karnal.

6. It has also been held that defendant No.1-Sahil (in Civil Suit No. 817 of 2012) has failed to prove the Will on record. Only a photocopy of the WILL was placed on record as Mark X and

therefore, without producing the original WILL there was no compliance of Sections 64 and 65 of the Indian Evidence Act, 1872. No application was ever moved to bring on record the secondary evidence with the reasons required to lead the secondary evidence.

For the said purpose, findings recorded by learned First Appellate Court in paragraph No.23 and 24 of the judgment are reproduced here under:

'23. It has very much come in evidence that the suit property belongs to the Improvement Trust Karnal and Shri Rattan Singh was occupying the same as a tenant. This fact was also not disputed by the learned counsel for the parties at the time of arguments that Shri Rattan Singh was occupying the disputed shop in the capacity of a tenant and he used to regularly pay the rent to the Improvement Trust, Karnal. Now it is to be seen whether Shri Rattan Singh was having good title to execute the Will in respect of the suit property or not. As categorically deposed by PW2 Shri Pal Singh, Secretary, office of Karnal Improvement Trust, the Karnal Improvement is the owner of the said shop and Shri Rattan Singh was occupying the same in the capacity of a tenant. It being so, it can be safely concluded that Shri Rattan Singh was not the owner of the disputed shop and therefore he was not having better title to execute the Will regarding the same. Further more, the plaintiff Sahil has based his right over the suit property on the basis of the Will in question purported to have been executed by his grand-father Shri Rattan Singh. Therefore, he is required to prove the execution of the Will as per the provisions of the Indian Evidence Act and also to remove the suspicious circumstances surrounding the same. The onus was thus upon Sahil defendant to prove that the Will in question is a valid one and is not surrounded by any suspicious circumstances. In the considered opinion of the court, plaintiff Sahil (defendant in Civil Suit No.817 of 2012) has also failed to prove the execution of the Will in question because the plaintiff Sahil in Civil Suit No.450 of 2012 placed on record certified copy of the Will as Ex.P1 whereas in the other civil suit, he placed photo copy of the Will as Mark-X. The original Will was not produced on the file in neither of the case. He also did not move any application before the learned trial court for leading secondary evidence and has not explained the

compelling conditions and circumstances which prevented him from producing on record the original Will. Section 64 of the Indian Evidence specifically provides that the document must be proved by leading primary evidence except in the cases hereinafter mentioned in Section 65 of the Act. Reference in this regard can be made to the authority Sampat Singh Vs. Bhagwanti and others, AIR 2010(NOC) 701 (P&H). As stated above, since, Shri Rattan Singh was not the owner of the suit property and was having no legal right to execute the Will regarding the suit property, therefore, the Will automatically becomes illegal and null and void. Therefore, the learned trial court has rightly decided issue No.1 of Civil Suit No.450 of 2012 against plaintiff (Sahil) and in favour of defendant (Vijay).

24. *The plaintiff Vijay Kumar of Civil Suit No.817 of 2012 while appearing in the witness box has categorically stated that he is in actual physical possession of both the shops No.11 and 12 situated at Bhagat Singh market road, Karnal and is running his Hotel/Dhaba therein and the defendant No.1 or his father has got no right, title or interest in the said shop but after the death of Shri Rattan Singh, defendant No.1 without having any right, title or interest in the property started claiming his right over the properties left by Shri Rattan Singh on the basis of alleged bogus and forged Will and tried to take possession forcibly and illegally but could not succeed in his evil designs Defendant Sahil in Civil Suit No.817 of 2012 stepped into the witness box as DW1 and in his cross-examination, he categorically admitted that Vijay Kumar plaintiff used to pay the rent of the shop to the Improvement Trust, Karnal and he is running Delux Vaishno Dhaba since the time of his grand-father Shri Rattan Singh. Meaning thereby that the defendant Sahil has admitted the possession of plaintiff Vijay Kumar over the suit property and Sahil also could not lead any convincing evidence on the file to prove that he was in joint possession of the suit property alongwith Vijay Kumar. It being so, the plaintiff Vijay Kumar is certainly entitled to the relief of permanent injunction restraining the defendant from interfering in the possession of the plaintiff over the suit property and taking possession of the same illegally and forcibly. The submission of the learned counsel for the appellant that even if the Will in question is ignored, even then the appellant is a co-sharer in the disputed property being the grand-son of Shri Rattan Singh, is without any merit in it because there is no pleading of plaintiff Sahil in the plaint that the suit property is Joint Hindu Family or coparcenary property Shri Rattan Singh was occupying the disputed property as a tenant and as such, these are the tenancy rights.*

Therefore, the defendant Sahil cannot be termed as a co- sharer. Therefore, the learned trial court has rightly decided issue No.1 of Civil Suit No.817 of 2012 in favour of plaintiff (Vijay)and against the defendants.'

7. With the findings recorded by the Courts below, this Court is not in a position to take a different view, more for the reasons that the property in question i.e. shop was occupied by Rattan Singh only as a tenant and he never acquired, any title over it.

8. At this stage, counsel for the appellant further argues that he had moved an application for leading additional evidence before the learned First Appellate Court, but without taking any decision over that, the appeal was dismissed. Thus, impugned judgment and decree are required to be set aside by remitting the appeals for its re-decision before First Appellate Court.

9. On being asked by this Court, that what is the relevancy of leading additional evidence once Rattan Singh, who is executor of the testator of the Will in question is not even recorded as owner of the property, learned counsel for the appellant could not give any satisfactory reply to that.

10. Moreover, from the impugned judgment and decree passed by the learned First Appellate Court, it appears that said application was never pressed/argued by the applicant. Accordingly, the impugned judgment and decree passed are maintained and the present appeal(s)are hereby dismissed.

Since, present regular appeals have been heard and

dismissed on merits, there is no need to pass any separate order in the
pending applications and the same stands disposed of.

September 11,2023
rashmi

[SANJAY VASHISTH]
JUDGE

Whether speaking/reasoned	yes/no
Whether reportable?	yes/no