



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No. 1621 of 2024 (O&M)
Date of Decision: 01.07.2024

Anoop Kumar

..... Appellant

Versus

Anil Kumar and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Jagdish Manchanda, Advocate
for the appellant-defendant No. 3.

HARKESH MANUJA, J. (ORAL)

By way of present appeal, challenge has been laid to the judgment and decree dated 19.02.2024 passed by the Court of Additional District Judge, Jalandhar (**hereinafter to be referred as “First Appellate Court”**), whereby the appeal filed against the judgment and decree dated 13.04.2018 passed by the Court of Civil Judge (Junior Division), Jalandhar (**hereinafter to be referred as “trial Court”**), decreeing the suit for separate possession by metes and bounds *qua* 1/8th share of the plaintiff and defendant Nos. 1 to 7 (filed at the instance of respondent No. 1-plaintiff / Anil Kumar), was partly allowed to the extent of grant of preliminary decree.

[2] Briefly stating, respondent No. 1-plaintiff (Anil Kumar) filed a suit for possession by way of metes and bounds, claiming 1/8th share over the suit property bearing House No. ND 125, situated at Bikrampura,

Jalandhar, which was owned by his mother, namely, Smt. Puran Rani wife of Sh. Vas Dev, having purchased 5½ Marla of suit property through registered sale deed dated 25.07.1989 with the remaining portion of 5½ Marlas been purchased in her name vide registered sale deed dated 03.01.1992, thereby making the total land measuring 11 Marlas. It was further pleaded that during her life-time, the mother, Smt. Puran Rani, sold 03 Marlas 68.5 sq. ft. in favour of Smt. Reetu wife of Sh. Anoop Kumar – appellant/defendant No. 3 vide registered sale deed dated 01.02.1999, which further came to be sold by Smt. Reetu to Smt. Kavita (respondent No. 8-defendant No. 8), who is the wife of respondent No. 1 / plaintiff–Sh. Anil Kumar vide registered sale deed dated 27.01.2011. It was then pleaded that Smt. Puran Rani died intestate on 15.06.2003 leaving behind respondent No. 1-plaintiff and defendant Nos. 1 to 7 as her legal heirs qua the remaining 8 Marlas of land and hence, the suit by respondent No.1-plaintiff, claiming 1/8th share in the property in question.

[3] The aforesaid suit was contested at the hands of appellant-defendant No. 3, while claiming that the mother Smt. Puran Rani executed a registered Will dated 06.07.1999, whereby the property in question was distributed amongst the legal heirs and thus, it never remained joint after her death.

[4] The trial Court vide its judgment and decree dated 13.04.2018 decreed the suit, filed at the instance of respondent No. 1-plaintiff, while holding that Smt. Puran Rani died intestate, leaving behind eight legal heirs. It was held that appellant-defendant No. 3 (Anoop Kumar) failed to

establish the partition of the suit property based on Will dated 06.07.1999, the same being not proved in terms of Section 63 of the Indian Succession Act, 1925, read with Section 68 & 69 of the Indian Evidence Act, 1872.

[5] Aggrieved thereof, appellant-defendant No. 3 filed first appeal, however, the same came to be dismissed vide judgment and decree dated 19.02.2024 passed by the First Appellate Court.

[6] Impugning the judgments and decrees (supra) passed by the trial Court and First Appellate Court, learned counsel for appellant-defendant No.3 submits that in the wake of admission made by respondent No. 1-plaintiff while appearing as PW-2 as regards the photograph of his mother on the Will dated 06.07.1999 (Ex. DX/A), besides even admitting her signatures thereupon, no further proof of Will was required and the suit was, thus, liable to be dismissed.

[7] No other argument has been raised on behalf of the appellant.

[8] After hearing learned counsel for the appellant and having gone through the paper-book / records, I am unable to find substance in the submissions made on behalf of appellant-defendant No.3.

[9] In the present case, admittedly, the property in question was purchased by Smt. Puran Rani, who is the mother of appellant-defendant No.3 (Anoop Kumar) vide two separate registered sale deeds dated 25.07.1989 & 03.01.1992, thereby making her owner in possession of 11 Marlas of land, out of which, she sold 03 Marlas 68.5 sq. ft. in favour of Smt. Kavita (defendant No. 8), who is the wife of respondent No. 1 / plaintiff (Anil Kumar) vide registered sale deed dated 27.01.2011. The

relationship between the parties being legal heirs of Smt. Puran Rani has not nowhere been disputed during trial. Further, it has also not been disputed that Smt. Puran Rani, unfortunately died on 15.06.2003. The only contest made at the instance of appellant-defendant No. 3 is that the property in question stood portioned amongst the legal heirs of Smt. Puran Rani by virtue of registered Will dated 06.07.1999. Unfortunately, the said Will has not been proved by appellant-defendant No. 3 in terms of Section 63 of the Indian Succession Act, 1925, read with Section 68 or 69 of the Indian Evidence Act, 1872. None of the attesting witnesses has been produced so as to prove the valid attestation and execution of Will in question. A half-hearted attempt has been made to submit that the non-production of either of the attesting witness was on account of their unfortunate demise before the filing of suit. However, no effort at all has been made to prove the Will dated 06.07.1999, in terms of Section 69 of the Indian Evidence Act, 1872 and in such circumstances no illegality or perversity can be found in the judgments and decrees (supra) passed by the Courts below, treating respondent No. 1-plaintiff besides defendant Nos. 1 to 8 being the legal heirs-cum-co-owners and successors of deceased-Smt. Puran Rani *qua* the property in question, while ignoring the Will dated 06.07.1999 being not proved on record in accordance with the principles of law. Furthermore, mere admission about photograph and signatures of mother on the Will in question would not dispense the statutory requirement of its attestation, as envisaged under Section 63 of the Indian Succession Act, 1925.

[10] In view of the above, there being no mis-reading of the pleadings or the evidence available on record, finding no merit in the present appeal, the same is hereby **dismissed**.

[11] Pending miscellaneous application(s), if any, shall also stand disposed off.

July 01, 2024
'dk kamra'

(HARKESH MANUJA)
JUDGE

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