



127 IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

RSA-3822-2023 (O&M)  
Date of decision : 23.07.2024

SANT JOGINDER SINGH ....Appellant

Versus

GURCHARAN SINGH DECEASED TH LRS AND ORS ...Respondents

**CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN**

Present : Mr. C.S. Jattana, Advocate  
for the appellant.

**PANKAJ JAIN, J. (ORAL)**

Plaintiff filed suit seeking declaration that he is in permanent possession of the property as described in the head note of the plaint. Further sought relief of symbolic possession as well as decree of permanent injunction.

2. The case of the plaintiff was that he is residence of village Lall Kalan. One Sant Baba Ram Singh was the original owner in possession of the suit property. Impressed with the services rendered by the plaintiff Sant Baba Ram Singh executed a legal and valid Will dated 27<sup>th</sup> of February, 2009 in favour of the plaintiff. Sant Baba Ram Singh died on 17<sup>th</sup> of October, 2009. On the basis of the said Will, plaintiff sought declaration. Defendants No.1, 2, 23 to 26 contested the suit. On merits, so far as the title of Sant Baba Ram Singh is concerned, the same was admitted. However,

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execution of Will dated 27<sup>th</sup> of February, 2009 was denied. Trial Court framed the following issues:

- “1. Whether the plaintiff is entitled to relief of declaration as prayed for? OPP
2. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP
3. Whether Sant Baba Ram Singh executed Will dated 27.02.2009 as alleged by the plaintiff in his favour pertaining to suit property ? OPP
4. Whether the suit is not maintainable ? OPD
5. Whether the plaintiff has no competence to file the present suit? OPD
6. Whether the Will dated 27.02.2009 is false, forged and fictitious document ? OPD
7. Whether the plaintiff is not in possession of the suit property? OPD
8. Whether this Court has no jurisdiction to try and decide the present suit ? OPD
9. Whether Will dated 27.02.2009 does not pertain to suit property? OPD
10. Whether present suit is not properly valued for the purpose of court and jurisdiction ? OPD
11. Relief.”

3. After the plaintiff failed to adduce any evidence, suit was dismissed resorting to Order 17 Rule 3 of the Cr.P.C.

4. The appeal preferred by the plaintiff also stands dismissed. Ld. lower Appellate Court recorded that after framing of issues on 19<sup>th</sup> of May, 2017, five effective opportunities were granted to the appellant/plaintiff but

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he could not examine even a single witness. After affording three opportunities, further opportunities were given on payment of costs which also could not be made good.

5. Counsel for the appellant while assailing the impugned judgment and decree submits that the appellant was incapacitated physically as he was suffering from renal ailment and had undergone kidney transplant. In order to demonstrate the same, he wishes to rely upon medical record placed on the file in form of documents marked as Annexures A1 to A9.

6. I have heard counsel for the appellant and have gone through records of the case.

7. It is a matter of record that the issues were framed on 19<sup>th</sup> of May, 2017. After having been granted three effective opportunities when the plaintiff failed to examine even a single witness, another opportunity was granted to him to lead evidence subject to payment of costs of Rs.200/-. Neither the cost was paid nor any evidence was adduced. Still another opportunity was granted to the appellant/plaintiff subject to payment of further costs of Rs.500/-. The plaintiff instead of adducing evidence filed application seeking permission to withdraw the suit on technical grounds. The same was dismissed. Again one last and final opportunity was granted to the plaintiff to lead entire evidence and it was made clear that no further opportunity will be granted to lead evidence. On 13<sup>th</sup> of December, 2017 the plaintiff again failed to lead any evidence. Evidence of the plaintiff was

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closed by order and the suit was dismissed invoking provisions of Order 17 Rule 3 CPC. It has also come on record that on 7<sup>th</sup> of November, 2017 counsel for the plaintiff undertook to conclude entire evidence on the next date of hearing but even the said undertaking could not bear any result.

8. The plea raised w.r.t. medical condition of the plaintiff is sought to be supported by way of documents marked as Annexures A-1 to A-9 appended along with the appeal. However, bare perusal of the aforesaid documents would reveal that all the record is in form of outdoor patient slips and there is no record to show that the appellant ever remained admitted or was operated for kidney transplant as is being claimed.

9. Keeping in view the conduct of the plaintiff, this Court finds that no fault can be found with the procedure adopted by the Courts below. It will be apt to refer to the following observations made by Apex Court in the case of **M/s Shiv Cotex vs. Tirgun Auto Plast P. Ltd and others, 2011(4) RCR (Civil) 807 -**

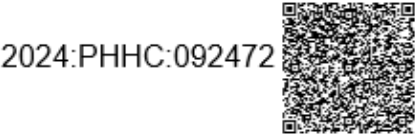
“15 .....It is high time that courts become sensitive to delays in justice delivery system and realise that adjournments do dent the efficacy of judicial process and if this menace is not controlled adequately, the litigant public may lose faith in the system sooner than later. The courts, particularly trial courts, must ensure that on every date of hearing, effective progress takes place in the suit.

16. No litigant has a right to abuse the procedure provided in the CPC. Adjournments have grown like cancer corroding the entire body of justice delivery system. It is true that cap on adjournments to a party during the hearing of the suit provided in proviso to Order 17 Rule 1 Civil Procedure Code is not mandatory

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and in a suitable case, on justifiable cause, the court may grant more than three adjournments to a party for its evidence but ordinarily the cap provided in the proviso to Order 17 Rule 1 Civil Procedure Code should be maintained. When we say 'justifiable cause' what we mean to say is, a cause which is not only 'sufficient cause' as contemplated in sub - rule (1) of Order 17 Civil Procedure Code but a cause which makes the request for adjournment by a party during the hearing of the suit beyond three adjournments unavoidable and sort of a compelling necessity like sudden illness of the litigant or the witness or the lawyer; death in the family of any one of them; natural calamity like floods, earthquake, etc. in the area where any of these persons reside; an accident involving the litigant or the witness or the lawyer on way to the court and such like cause. The list is only illustrative and not exhaustive. However, the absence of the lawyer or his non - availability because of professional work in other court or elsewhere or on the ground of strike call or the change of a lawyer or the continuous illness of the lawyer (the party whom he represents must then make alternative arrangement well in advance) or similar grounds will not justify more than three adjournments to a party during the hearing of the suit. The past conduct of a party in the conduct of the proceedings is an important circumstance which the courts must keep in view whenever a request for adjournment is made. A party to the suit is not at liberty to proceed with the trial at its leisure and pleasure and has no right to determine when the evidence would be let in by it or the matter should be heard. The parties to a suit - whether plaintiff or defendant - must cooperate with the court in ensuring the effective work on the date of hearing for which the matter has been fixed. If they don't, they do so at their own peril. Insofar as present case is concerned, if the stakes were high, the plaintiff ought to have been more serious and vigilant in prosecuting the suit and producing its evidence. If despite three opportunities, no evidence was let in by the plaintiff, in our view, it deserved no sympathy in second appeal in exercise of power under Section 100



CPC. We find no justification at all for the High Court in upsetting the concurrent judgment of the courts below. The High Court was clearly in error in giving the plaintiff an opportunity to produce evidence when no justification for that course existed.”

10. In view thereof, this Court does not find any reason to interfere in the judgment and decree passed by the Courts below. Resultantly, the instant Regular Second Appeal is dismissed.

July 23, 2024

Dpr

(Pankaj Jain)

Judge

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No