



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

RSA No.803 of 2022 (O&M)
Date of decision: 20.02.2025

Pushpa Devi and others

....Appellants

V/s

Vijay Kumar and another

....Respondents

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Vishal Aggarwal, Advocate, for the appellants.

VIKRAM AGGARWAL, J.(ORAL)

Plaintiffs assail the judgment and decree dated 16.12.2021 passed by the Court of learned District Judge, Yamuna Nagar, dismissing the appeal preferred against the judgment and decree dated 07.04.2017 passed by the Court of learned Civil Judge (Jr. Divn.), Yamuna Nagar, vide which the suit for separate possession filed by the plaintiffs was dismissed.

2. For the sake of convenience and clarity, parties shall be referred to as per their original status.

3. One Ghasitu Ram had three sons namely Prem Chand, Vijay Kumar and Brij Bhushan and three daughters. Prem Chand expired in the year 1993 and is survived by his wife Pushpa Devi and his sons Arvind Kumar and Ashwani Kumar (plaintiffs). The plaintiffs filed a suit against the other two sons of Ghasitu Ram namely Vijay Kumar and Brij Bhushan for separate possession by way of partition of a residential House bearing No.1779 situated at Rajan Street, Tehsil Jagadhri, District Yamuna Nagar, measuring 133 sq. yds. (hereinafter referred to as the “house in dispute”).

Consequential relief of permanent injunction restraining the defendants from

raising any sort of construction and alienating the house in dispute was also



sought. The case set up was that the house in dispute was owned and possessed by Ghasitu Ram. The same was inherited by the three sons of Ghasitu Ram in equal shares. It was averred that the house in dispute had not been partitioned by metes and bounds and despite repeated requests, the defendants had not agreed for the same.

4. The suit was opposed by the defendants. In the written statement, certain preliminary objections with regard to maintainability, estoppel and cause of action were raised. On merits, it was averred that the house in dispute was the self-acquired property of Ghasitu Ram and he had executed a Will dated 07.01.1995, vide which the house in dispute was given to defendant No.1 (Vijay Kumar). It was averred that Ghasitu Ram had also purchased two other houses bearing No.1780 and 1781 in the name of the plaintiffs and defendant No.2 (Brij Bhushan). In fact, defendant No.2 had sold the said house and was residing near Vridh Asharam, Jagadhri. Ghasitu Ram expired in the year 2003 and his wife expired in the year 2007. It was averred that after their death, only defendant No.1 (Vijay Kumar) was residing in the house in dispute and that neither the plaintiffs nor defendant no.2 had any concern with the house in dispute. It was also averred that earlier the three houses had different numbers but subsequently the numbers had been changed to 1779, 1780 and 1781.

5. From the pleadings of the parties, following issues were framed by the trial Court:-

“1. Whether plaintiffs are entitled to separate possession by way of partition by metes and bounds of the property is fully detailed and described in the head note of the plaint?OPP

2. Whether the plaintiffs are entitled to the relief of permanent injunction as prayed for?OPP

3. Whether the suit of the plaintiffs are not legally maintainable?OPD



4. Whether the plaintiffs have no locus standi and no cause of action to file the present suit?OPD

5. Relief.

6. Parties led their respective evidence. The trial Court dismissed the suit filed by the plaintiffs and the appeal preferred against the said judgment and decree was also dismissed by the first appellate Court leading to the filing of the present second appeal.

7. I have heard learned counsel for the appellants.

8. Learned counsel for the appellants has raised two fold submissions. He submits that in the Will, the number of the house in dispute was mentioned as 693, whereas, in the plaint, as also in the assessment register etc., which was produced in evidence, the number of the house in dispute was mentioned as 1779. Learned counsel submits that under the circumstances, the house in dispute does not match with the house mentioned in the Will. The second argument which has been raised is that the signatures of Ghasitu Ram on the Will were not proved by examining any expert and, therefore, the execution of the Will did not stand proved. Learned counsel submits that the judgments and decrees of the Courts are, therefore, not sustainable.

9. I have considered the submissions made by learned counsel for the appellants and have perused the relevant record which was produced by him during the course of arguments.

10. Both the Courts concurrently held that execution of the Will (Ex.D2) was duly proved. Sh. Tarun Kumar, Advocate, who was one of the attesting witnesses of the Will was duly examined as DW2 and Sh. G.C. Verma, Advocate, Notary Public and had made his endorsement (Ex.D3) at the back of the Will was also examined as DW3. Their testimonies were found to be consistent and trustworthy by both the Courts and the Courts, therefore, held that the provisions of Section 63 of the Indian Succession



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with. There was no requirement of proving the signatures of Ghasitu Ram, once the legal requirements had been fulfilled by the propounders of the Will. If the plaintiffs were so anxious to prove that the Will was not genuine, they could have examined some expert to prove that the signatures were not of Ghasitu Ram. As regards the number of the house in dispute, the Will mentions the same as 693, whereas the plaint mentions the same as 1779. In the written statement also, the numbers have been mentioned as 1779 etc. The Will was executed on 06.01.1995. It is the categorical stand in the written statement that earlier there were old numbers but subsequently new numbers had been allotted. Even otherwise, it is not anybody's pleaded case that the property in the Will and the house in dispute were different properties. No replication was filed to the written statement. No question to this effect was put to any witness. It, therefore, emerges that there is actually no dispute as regards the identity of the property and the same has been raised for the first time before this Court in second appeal, which is not permissible.

11. Though, no other argument has been raised, I have gone through the judgments of both the Courts and find no illegality in the same warranting interference in second appeal.

12 In view of the aforementioned facts and circumstances, I do not find any merit in the present appeal and the same is accordingly dismissed.

Application(s), if any, shall also stand disposed of.

(VIKRAM AGGARWAL)
JUDGE

February 20, 2025
vcgarg

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No