

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****116****RSA-977-2022 (O&M)****Date of Decision : 13.02.2025**

Savitri Devi

....Appellant

VERSUS

Meena Rani and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Suresh Kumar Aneja, Advocate for the appellant.

ALKA SARIN, J. (Oral)**CM-3111-C-2022**

1. For the reasons stated in the application, the same is allowed.

The delay of 127 days in re-filing the present appeal is condoned.

CM-3112-C-2022

2. For the reasons stated in the application, the same is allowed.

The delay of 119 days in filing the present appeal is condoned.

RSA-977-2022 (O&M)

3. Present appeal has been preferred by the plaintiff-appellant challenging the judgment and decree dated 17.07.2018 passed by the Trial Court and the judgment and decree dated 16.03.2020 passed by the First Appellate Court.

4. The brief facts relevant to the present *lis* are that the plaintiff-appellant filed a suit for declaration to the effect that she is the owner of the house measuring 20'x60' bearing Plot No.142 comprised in Khara No.152-

154-155 on the basis of a Will dated 25.01.2006 executed by Kasturi Devi widow of Harbans Lal with consequential relief of possession. It was further averred in the plaint that Harbans Lal was the original owner of the suit property, who was stated to be an employee of Municipal Council, Fazilka and Plot No.142 was allotted to him and he raised construction upon the same. It was the case set up by the plaintiff-appellant that the suit property was given by Harbans Lal during his lifetime to Kasturi Devi and Kasturi Devi executed a valid Will dated 25.01.2006 in favour of the plaintiff-appellant. Defendant-respondent Nos.1 and 2 have no right, title or interest in the suit property. Defendant No.2 - Sohan Lal (since deceased) - appeared but failed to file his written statement and hence his defense was accordingly struck off. Defendant No.1 - Meena Rani (respondent No.1 herein) - contested the suit by filing a written statement raising preliminary objections that the plaintiff-appellant had not approached the Court with clean hands and that the suit was barred by the principle of *res judicata*. The existence of a Will was denied. It was further the case set up that no document had been relied upon to state that the suit property had been transferred to Kasturi Devi by Harbans Lal. It was further stated that the defendant-respondent No.1 filed a declaratory suit in relation to the suit property in which similar plea was raised by the plaintiff-appellant, however, the plaintiff-appellant failed to lead any evidence. The suit filed by defendant-respondent No.1 was dismissed. Thereafter, in appeal it was held that the property was owned by Harbans Lal and after his death the house was owned by Smt. Meena Rani, Smt. Savitri Devi and Sohan Lal in equal

shares. No appeal was preferred by the plaintiff-appellant herein against the said judgment and decree. It was further averred that the plaintiff-appellant had got married when defendant-respondent No.1 was only 6-7 years old and the plaintiff-appellant never remained in possession of the suit property.

5. On the basis of pleadings of the parties the following issues were framed :

1. Whether the plaintiff is owner of the suit land ?
OPP
2. Whether Kasturi Devi executed a valid Will dated 25.01.2006 regarding suit property in favour of the plaintiff ? OPP
3. Whether the plaintiff is entitled for declaration as prayed for ? OPP
4. Whether the plaintiff is entitled for possession of the suit property ? OPP
5. Whether the plaintiff has concealed material facts, if so its effect ? OPD
6. Whether the suit is barred by res judicata ? OPD
7. Whether the plaintiff has no locus standi or cause of action to file the present suit ? OPD
8. Whether the plaintiff is estopped by his own act and conduct from filing the suit ? OPD
9. Whether the suit is not maintainable ? OPD
10. Relief.

6. The Trial Court vide judgment and decree dated 17.07.2018 partly decreed the suit holding that the plaintiff-appellant to be a co-owner to the extent of half share in the suit property. Aggrieved by the same an appeal was preferred by the plaintiff-appellant which appeal was dismissed by the First Appellate Court vide judgment and decree dated 16.03.2020. Hence, the present regular second appeal.

7. Learned counsel for the plaintiff-appellant would contend that both the Courts have erred in only partly decreeing the suit of the plaintiff-appellant. It is urged that Kasturi Devi had become owner of the suit property after Harbans Lal transferred the same in her favour and on the basis of the Will executed by Kasturi Devi, the plaintiff-appellant has become owner of the suit property. It is further contended that the Will was upheld and hence the suit ought to have been decreed in toto.

8. Heard.

9. In the present case there was not an iota of evidence to prove that Harbans Lal had transferred the suit property in favour of Kasturi Devi. On the death of Harbans Lal, in the absence of any Will or any document of transfer, the property would have devolved by natural succession upon his wife – Kasturi Devi; daughters, namely, Savitri Devi and Meena Rani; and son Sohan Lal. Both the Courts upheld the validity of the Will and hence held the plaintiff-appellant entitled to half share of the property left by Harbans Lal i.e. 1/4th inherited by the plaintiff-appellant on the death of Harbans Lal and 1/4th by way of Will from Kasturi Devi. Learned counsel for the plaintiff-appellant has not been able to point out to any document on

record to show that Kasturi Devi was the owner to the extent of 100% share in the suit property. In the absence of any such document, no fault can be found with the judgments and decrees passed by both the Courts. In the face of the findings recorded by both the fact finding Courts, there is no scope for any interference by this Court. No cogent and reliable evidence has been highlighted by the counsel for the plaintiff-appellant for this Court to take a contrary view from the one taken by both the Courts. No other point was argued.

10. In view of the above, I do not find any merits in the present appeal. No question of law, much less any substantial question of law, arises in the present case. The appeal, being devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

13.02.2025
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO