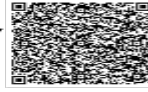
**IN THE HIGH Court OF PUNJAB AND HARYANA AT CHANDIGARH****227****RSA-1325-2001 (O&M)****Date of decision: 18.08.2025****Chaman Lal****...Appellant(s)****Vs.****Rajinder @ Pappu and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Sanjiv Gupta, Advocate for the appellant.

NIDHI GUPTA, J.

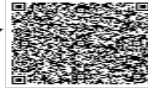
Present appeal has been filed by the plaintiff against the concurrent judgments and decrees of the learned Courts below, whereby suit filed by the appellant for partition, has been dismissed by both the Courts below.

2. Brief facts of the case are that Bhuria Ram, father of the plaintiff and defendants No. 2 to 6 and husband of defendant No.1 was owner in possession of the suit house as described in the plaint. Bhuria Ram had died on 29.10.1979. During his lifetime, Bhuria Ram had performed marriages of his daughters/defendants No. 4 to 6 therein. He had given sufficient dowry, and they had been fully compensated. It was the case of the plaintiff that therefore the said house has been inherited by the plaintiff and defendants No.1 to 3 in four equal shares as per the provisions of Indian Succession Act; and therefore, plaintiff is also owner in possession of the said house upto 1/4th share. It was further pleaded that however the husband of defendant No.5 being an Inspector in



Haryana Police in connivance with defendants No. 4 and 6 had wanted to grab the said house; for which purpose a Civil Suit for declaration was filed on 23.05.1993 to get the said defendants declared as owners on the basis of a false Family Settlement and a false Will was prepared by the said defendants. However, the said suit was withdrawn by the defendants on 10.08.1993. It was further pleaded that the plaintiff and defendants No.1 to 3 were in joint possession of the suit house. Plaintiff was also having a house adjoining the suit house to which they were having common passage with the Defendants and Kamlesh Rani. Defendants No. 4 to 6 had threatened him to close the common passage and to change the nature of dwelling house. Plaintiff had therefore requested defendants number of times that he being co-sharer to the extent of 1/4th, the defendants had no right, title or interest in the suit property to block the said passage unless the same is partitioned by metes and bounds, however to no avail. Hence, the present suit was filed by the plaintiff on 17.09.1993.

3. Upon notice, defendants had put in appearance before the learned trial Court and had resisted the suit. Defendants No. 1 to 3 had filed a separate written statement and defendants No. 4 to 6 had filed a separate written statement. Defendants No.1 to 3 in their written statement had denied that there is any common passage with the house of the plaintiff; however admitted common passage with Smt. Kamlesh Rani. They had also denied that defendants No. 4 to 6 had no concern with the suit house. They had further informed that in fact it was the plaintiff who had no concern

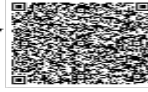


with the suit house as during his lifetime, Bhuria Ram had executed a Will in favour of defendant No.1 vide which she had become absolute owner of the suit property. Defendants No. 4 to 6 in their separate amended written statement had also made reference to the said Will averring that Bhuria Ram had executed a Will dated 23.06.1979 Ex.D1 in his lifetime in favour of defendant No.1 as per which she became absolute owner of the suit property. Thereafter, defendant No.1 had also executed a Will dated 07.09.1992 Ex.D2; as per which she had bequeathed the suit house to defendants No. 4 to 6. Defendant No.1 had expired on 25.07.1997. Therefore, after the death of defendant No.1, defendants No. 4 to 6 became absolute owners of the suit property. Though they admitted that on the basis of a family settlement, they had filed a suit but later on the same was got dismissed as withdrawn because the matter was compromised.

4. Replication was the filed.

5. On the basis of pleadings of the parties, following issues were framed on 18.5.94: -

1. *Whether the plaintiff is co-sharer in the house no. 14.724 to the extent of 1/4th share? OPP*
2. *Whether the plaintiff has no locus standi to file the present suit? OPD*
3. *Whether the suit is not maintainable in the present form? OPD*
4. *Whether the suit is bad for non-joinder of necessary parties? OPD*
5. *Whether the suit is time barred? OPD*
6. *Whether the plaintiff is stopped by his own act and conduct to file and maintain the suit? OPD*



7. Whether the suit has not been properly valued for the purposes of court fee?OPD

8.Relief.”

6. However, after filing of amended written statement, following additional issues framed on 19.5.98: -

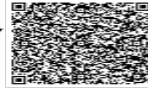
“7(a) Whether Smt. Ganpati defendant no.1, who had died on 5.7.97, has executed a will on 7.8.91 regarding the property in dispute. If so to what effect ?OPD.

7 (b) Whether the defendants no.4 to 6 who are the daughters of Smt. Ganpati deceased have any right regarding property in dispute in the said will executed by Smt. Ganpati? OPD

7 (c) Whether Bhuria Ram executed a valid will in favour of Smt. Ganpati, If so, to what effect ? OPD”

7. Upon appraisal of the pleadings and the evidence led by the parties, the trial Court vide judgment and decree dated 20.02.1999 had dismissed the suit of the plaintiff with costs. The appeal filed by the plaintiff was also dismissed by learned Additional District Judge, Karnal vide judgment and decree dated 17.11.2000, thereby affirming the judgment and decree of the learned trial Court. Hence, the present second appeal by the plaintiff.

8. Learned counsel for the appellant assails the concurrent judgments and decrees of the learned Courts below by submitting that the findings of the courts below are altogether erroneous in as much as admittedly the property was owned by Shri Bhuria Ram, who died in the year 1979 and prior to his death, it was alleged that a Will was executed on 23.6.79. When the municipal record was corrected in favour of Ganpati,



there is no reference of the alleged Will. As a matter of fact, the abundant precaution and with a view to give due regard to Smt. Ganpati, the entire was inherited as per the municipal record in favour of Ganpati after the death of Bhuria Ram and accordingly the appellant became entitled to 1/4th share in the property. The alleged subsequent Will was executed by Smt. Ganpati on 7.9.92 made hold good vis-a-vis her share and can't bind the plaintiff-appellant so far as the share comes the appellant is concerned. That aspect of the matter has not been considered by the Id. courts below. Resultantly, the findings of both the courts below are liable to be set aside.

9. Learned counsel for the appellant further submits that the findings recorded by the courts to the effect that the Will is genuine has no bearing because if the Will is perused, Will is being witnessed by two persons, one is Scribe and other person is the husband of daughter. As per the settled law, the scribe can't be a witness because the scribe has reduced the contents of the alleged Will in writing and he can not witness. Furthermore, there is no independent witness and as such the genuineness of the Will is automatically impeached. That aspect of the matter has not been considered. Furthermore, the Will is alleged of the year 1979 came into being for the first year in 1994. This clearly goes to show that the Will is shrouded by suspicious circumstances.

10. It is further submitted by learned counsel for the appellant that apart from this the Will in question is in English language whereas it is allegedly thumb marked by Bhuria Ram. It is duly proved that Bhuria Ram was an illiterate person and he did not know English. Apart from this, there



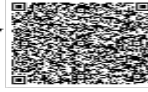
is no logic to debar the son. After the alleged execution of Will during the pendency of the present controversy, Smt. Ganpati executed an affidavit on 29.5.93 duly attested by the Executive Magistrate wherein she conceded that there is no Will and there is any statement recorded before the court, that was under the pressure of one of the son-in-law. Apart from this, the alleged will dated 7.9.1992 has also not seen the light of the day. On that score also, the judgement and decree of the courts below are liable to be set aside.

11. Learned counsel for the appellant further submits that the impugned judgements are liable to be set aside on more aspect i.e there is alleged Will of 7.9.1992, whereas the written statement was filed by the aforesaid Ganpati in the year 1993. She did not make any reference regarding the alleged Will in her written statement. Thereafter altogether a somersault was taken and a story was put forth which was belied by the court. All these pleas were also raised before the Id. courts below. However, none of the plea raised has been taken into consideration. Resultantly the findings of the courts below are liable to be set aside.

12. It is accordingly prayed that the present Second Appeal be allowed; and the impugned judgments and decrees of the learned Courts below be set aside.

13. No other argument is raised on behalf of the appellant/plaintiff.

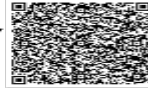
14. I have heard learned counsel for the appellant/plaintiff and perused the case file in great detail.



15. A perusal of the record of the case shows that it has been categorically found by the learned trial Court that Bhuria Ram in his Will dated 23.06.1979 Ex.D1 has clearly stated that he is executing a Will in favour of his wife because he has no trust over his sons i.e. the plaintiff and defendants No.2 and 3. Moreover, the propounder of the Will i.e. the defendant no.1 had successfully discharged onus of proving the Will dated 23.06.1979 which was validly executed in favour of defendant No.1. The attesting witnesses had deposed that they had signed the Will in presence of each other. Will dated 23.06.1979 Ex.D1 was proved from the evidence of its attesting witnesses Barkat Ram DW6 and Amrit Lal DW7. Merely because Barkat Ram who was also Scribe of the Will, would not be sufficient ground to discard the said Will. Furthermore, DW1 Ashok Gupta Advocate had testified that he had read over the contents of the said Will Ex. D1 to Bhuria Ram and the same was signed by Bhuria Ram after admitting its contents to be correct and executing affidavit on the Will.

16. It has also been contended by the plaintiff that the Will dated 23.06.1979 was neither registered nor written by regular Deed Writer. However, the same will not diminish the case of the defendants in any manner as admittedly Will is not compulsorily registrable document under the provisions of Registration Act. There is also no requirement that the Will is to be compulsorily scribed by a regular Deed Writer.

17. From the above facts, it is clear that defendant No.1 had become sole owner of the suit property.



18. As regards the Will dated 07.09.1992 Ex.D2 executed by defendant No.1 during her lifetime, the defendants had examined attesting witnesses Som Parkash DW4 and Radhey Shyam DW5, Scribe DW2 and Jai Parkash Sharma Notary Public DW3 who had all proved the said Will Ex.D2. Accordingly, it was held that the defendant No.1 had executed a valid Will dated 07.09.1992 Ex.D2 in favour of defendants No. 4 to 6. It was further found that had Maya Devi/defendant No.4 exerted any pressure upon defendant No.1 then she would have got the Will executed only in her favour. Further, defendant No.1 while executing the Will dated 7.9.1992, had given sufficient explanation therein for excluding her sons to the effect that her sons are not looking after her and only defendants No. 4 to 6 are taking care of her. It was for this reason that Will Ex.D2 was executed only in favour of defendants No. 4 to 6. This fact was also supported from the deposition of defendant No.2/DW10. This fact would also stand fortified from the writing of Bhuria Ram in his Will Ex.D1, wherein he had stated that he had no faith in his sons. Merely because the plaintiff was a son of Bhuria Ram, would not entitle him to claim 1/4th share in the suit property as, vide the impugned Will dated 23.06.1979 Ex.D1 and Will dated 07.09.1992 Ex.D2 executed in favour of defendants No. 4 to 6, the natural course of succession stood altered and defendants No. 4 to 6 became absolute owners of the suit house in equal shares.

19. Learned counsel for the appellant is unable to controvert or dispute the above said facts and findings.



20. In view of the discussion above, no ground is made out to interfere in the impugned judgments and decrees of the learned Courts below. The present Regular Second Appeal is hereby **dismissed**.

21. Pending applications, if any, stand disposed of.

18.08.2025

Divyanshi

**(NIDHI GUPTA)
JUDGE**

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No