

(2010) 05 P&H CK 0052

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 1730 of 2010 (O and M)

Kulbhushan Aggarwal alias
Gupta

APPELLANT

Vs

Smt. Anjana Bansal and Others

RESPONDENT

Date of Decision: May 4, 2010

Hon'ble Judges: Mahesh Grover, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Mahesh Grover, J.

C.M.No.5258-C of 2010

Allowed as prayed for.

C.M.No.5259-C of 2010 in/and R.S.A.No.1730 of 2010

1. The Plaintiff is in second appeal. He filed a suit claiming right to succeed to the estate of his father Lala Amar Nath. The suit property had been gifted away by Lala Amar Nath in favour of his wife Smt. Sushila Kumari @ Sushil Kumari. She further executed a registered Will in favour of the Respondents which alienation has been disputed by the Appellant. He has stated that during her life time and immediately after the death of his father on 2.9.1971 a family settlement dated 3.5.1972 had been arrived at in which the suit property was agreed to be given to the Appellant. Smt. Sushila Kumari died on 7.6.1995. He further pleaded that he is in possession of the property since the life time of Smt. Sushila Kumari and after her death he has become absolute owner of the same and that the Respondents are now threatening to interfere in his possession.

2. The Respondents contested the suit, denied the averments made in the plaint, admitted possession of the Appellant but pleaded that he is merely a licensee in a portion of the suit property. They also questioned the identity of the property which

has been described by the Appellant. It was pleaded by them that late Amar Nath was owner in possession of House Nos. 3563/63/1, 3564/64/1 and 3565/65/1 and in the gift deed dated 22.8.1954, which was registered on 1.10.1954, the numbers of the properties were given wrongly but the same were got corrected subsequently vide registered deed of correction dated 2.9.1955. These properties were given to Smt. Sushila Kumari vide registered gift deed dated 1.10.1954 and she had been given absolute ownership right over the said properties. She consequently executed a Will dated 3.5.1972 and thereafter executed another Will on 13.6.1988. Both these Wills were cancelled by her and finally she made last Will dated 27.7.1994 bequeathing her entire property including the property in question to the Respondents. Sushila Kumari died on 7.6.1995 and during her life time she had given the rights of management of property to the Appellant out of faith which she had reposed in him which has been exploited by the Appellant and this resulted in the denial of succession in his favour.

3. The parties went to trial on the following issues:

1. Whether Plaintiff is entitled to a decree for declaration as prayed for?OPP

2. Whether suit is not maintainable?OPD

3. Whether suit is not properly valued for the purposes of court fee and jurisdiction?OPD

4. Whether Plaintiff has no locus standi to file the present suit?OPD

5. Whether Plaintiff is estopped to file the present suit?OPD

6. Relief.

4. Both the courts concluded that the gift deed conferred absolute right of ownership upon Smt. Sushila Kumari and consequently she had every right to will away the property. The will was found to be genuine. In this manner the suit of the Plaintiff/Appellant was dismissed.

5. Aggrieved by the findings of the Courts below, the Appellant is in regular second appeal to contend that the findings of the Courts below are erroneous, a result of mis-interpretation of the terms of the gift deed and perverse as the will which was a result of forgery has been relied upon. He contends that these findings deserve to be set aside.

6. I have heard the learned Counsel for the Appellant and have perused the impugned judgments as also the relevant material which was shown to this Court during the course of arguments.

7. Learned Counsel for the Appellant laid much stress on the terms of the gift deed to contend that the rights given to Smt. Sushila Kumari were not absolute. The gift deed, according to the learned Counsel for the Appellant, was conditional and

merely conferred limited rights upon her and as a consequence thereof she was incapable of executing a Will in the absence of absolute ownership conferred upon her. However, this Court is not in agreement with the contention raised by the learned Counsel for the Appellant. A perusal of the gift deed shows that there is a clear recital in it to the effect that "Now the donee is the sole owner and possessor of above mentioned gifted properties". It further goes to say "Neither myself nor my successors in interests shall have no concern or rights whatsoever in the aforesaid gifted properties". Subsequent thereto another recital reads that "In future if I or my successors, in interests stakes their claims regarding the properties in question, then their claims, in view of written gift deed will be improper and null and void." The gift deed therefore is unambiguous that the executor Lala Amar Nath intended to confer absolute ownership rights upon his wife the reasons for which were also recorded in the gift deed. In such an eventuality when the Appellant pleads that the gift deed merely gives limited right to Sushila Kumari cannot be appreciated. A Will was executed by Sushila Kumari in favour of her daughters in the year 1994. The said Will has been found to be genuine and the plea of fraud which the Appellant sought to raise has been unsubstantiated to say the least. The cumulative effect of these factors is that Sushila Kumari was the absolute owner of the property and she had every right to bequeath or alienate the same in the manner she liked. There is thus no infirmity in the findings recorded by the Courts below and the appeal being without any merit is dismissed. Consequently the stay application is also dismissed.