

NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. 4638 OF 2022
[ARISING OUT OF SLP(C) NO.26829 OF 2018**

Aman Sharma & Anr.

...Appellants

Versus

Umesh & Ors.

...Respondents

J U D G M E N T

J.K. Maheshwari, J.

Leave granted.

2. The instant appeal arises out of the judgment dated 18.05.2018, passed by the High Court of Punjab & Haryana, Bench at Chandigarh, in Regular Second Appeal No. 6408/2016 (O&M) (hereinafter referred to as '**RSA**'), whereby the said RSA was dismissed and the order of the First Appellate Court in Civil Appeal

RBT No. 37 of 29.11.2012/28.01.2015 dated 31.08.2016 and judgment of Trial Court, Ferozepur dated 03.11.2012 were confirmed. In consequence, the suit for possession and mesne profit filed by the Plaintiff, who are Respondents 1 to 4 herein, with respect to a multi-storey house bearing Municipal No. BS-35-14 built on the land 4.01 marlas situated in Mohalla Shahganj, near Turi Bazar (hereinafter referred to as '**subject property**') was decreed. The Appellants and the Respondents herein are addressed as per their original position before the Trial Court.

3. The Plaintiffs filed Suit No. 253 of 30.07.2011/08.05.2007 before the Trial Court claiming possession and compensation from Defendants No. 2 & 3 for occupying and using the subject property from the date of institution of suit till delivery of possession at the rate of Rs.5,000/- per month on account of their forcible dispossession by Defendant No.1. It was contended that the subject property was originally owned by Lt. Pt. Lahori Ram, grandfather of Plaintiffs and the said Lahori Ram executed a Will dated 15.11.1957 with respect to the subject property in favor of their father, namely Krishna Kumar. After the death of the Pt. Lahori Ram on 21.10.1977, the father of the Plaintiffs became exclusive owner and

were in possession of the subject property. Father of Plaintiffs had also executed a Will dated 20.10.1993 in favor of alleged second wife Sushila Kumari who was mother of the Plaintiffs and the same was registered on 29.10.1993. Krishan Kumar died on 22.05.1997 thereafter, Sushila Kumari became the owner of the subject property. On death of Sushila Kumari on 29.07.2000, the Plaintiffs became owner and in possession of the subject property. It was also averred that Defendant No.1, namely Nand Kishore, claimed himself to be the son of Krishan Kumar from his first wife Bimla Rani, who removed all articles of the Plaintiff lying in the house and declared himself to be the owner of the house. Nand Kishore sold the house vide sale deed dated 04.05.2006 to Appellants, who were before the Trial Court as Defendant No.2 & Defendant No.3.

4. The Defendants No.1, 2 and 3 filed a common Written Statement wherein it was contended that Krishna Kumar was earlier married to Bimla Rani and out of this wedlock Defendant No.1 namely Nand Kishore and Hem Rani were born. On death of Bimla Rani, her sister Sushila Kumari started residing with Krishan Kumar to look after Nand Kishore and Hem Rani. Defendants also

claimed that their grandfather Pt. Lahori Ram had executed a Will dated 09.12.1975 in favor of Defendant No. 1-Nand Kishore who became owner after his death, therefore, Krishan Kumar had no right in the subject property, hence he cannot execute Will in favor of his second wife Sushila Kumari. It was further contended that Defendants No. 2 and 3 are bonafide purchasers who purchased the subject property after due diligence and have availed a loan to satisfy their obligations under sale deed, therefore, they are owner of the subject property and in possession of the house.

5. On the consideration of the pleadings and evidence, the Trial Court concluded that Defendant No.1-Nand Kishore and Plaintiffs were proved to be the son and daughters of Lt. Krishna Kumar. As regards, Will dated 15.11.1957, as contended by Plaintiffs, alleged to have been executed by Pt. Lahori Ram in favor of Krishna Kumar, was not proved through attesting witnesses or by proving that the said witnesses have already expired. Further, Will dated 09.12.1975 allegedly executed by Pt. Lahori Ram bequeathing subject property to the Defendant No.1-Nand Kishore was also not duly proved because there was a significant gap of 30 years from the date of

execution i.e. 09.12.1975 and registration of the same on 17.01.2006. For the said Will dated 09.12.1975, the Trial Court noted that after the death of Pt. Lahori Ram in 1977, Defendant No.1-Nand Kishore had the right to register the Will or to register his name in the assessment register of Municipal Council, but he chose to remain silent. It was only in 1992-93 that he made an entry in assessment register after unexplained delay of 17 years. The Trial Court observed that Krishna Kumar was the only son of Lt. Pt. Lahori Ram and no party had claimed that Krishna Kumar had any brothers or sisters. Thus, upon the death of Lt. Pt. Lahori Ram, Krishna Kumar succeeded to his estate. Further, the Will dated 20.10.1993 executed by Krishna Kumar in favor of Sushila Kumari, mother of Plaintiffs was duly proved through the evidence of one Yog Raj Sharma (marginal witness) and one Pradeep Kumar (document writer). Further, the Trial Court held that Plaintiffs who happen to be the daughters of Sushila Kumari succeeded her estate post her death in equal shares. The Courts below set aside the sale deed dated 04.05.2006 by which the subject property was transferred to the Defendants No. 2 and 3 on

the grounds that Defendant No.1 had no right in the property or to alienate the same. It was also observed that the Plaintiffs are not entitled to any compensation from Defendants No.2 & 3 as it cannot be held that they were in unauthorized occupation of the subject property.

6. Aggrieved by the Trial Court judgment dated 03.11.2012, Defendant No.1, Defendant No.2 and Defendant No.3 had filed the First Appeal bearing RBT No.37 of 29.11.2012/28.01.2015 before the Additional District Judge, Ferozepur. It was first time contended before the First Appellate Court that Krishna Kumar being coparcener having only 1/3rd share of the Suit Property as Pt. Lahori Ram had three legal heirs, therefore, Krishna Kumar was not competent to execute a Will or whole subject property. It was urged that Krishna Kumar had not proved that he was having strained relationship with Defendant No.1-Nand Kishore or his sister Hem Rani, hence he had no reason to execute the Will dated 20.10.1993 in favor of Sushila Kumari ignoring Defendant No.1-Nand Kishore and his sister. The Lower Appellate Court upheld the judgment and the decree passed by the Trial Court and observed that as it has not

been disputed that Lahori Ram had no other son and daughter except Krishna Kumar, therefore, it can safely be concluded that Krishna Kumar has inherited the entire Suit Property of the Lt. Lahori Ram by way of succession. The Court held that Krishna Kumar has given valid reasons for execution of the first and last Will dated 20.10.1993 bequeathing entire property in favor of Sushila to avoid any further litigation. Lastly, the Court held that Sale Deed dated 04.05.2006 was illegal and void because Defendant No.1-Nand Kishore had no right to alienate with the Subject Property in absence of ownership being proved which he claimed to be acquiring through Will dated 15.11.1957. Thus, the Court concluded that the Trial Court has rightly decreed the suit of Plaintiffs holding them owner in equal shares of the subject property and entitling them to get possession of the same from the Defendants.

7. Assailing concurring judgment dated 31.08.2016 passed by the First Appellate Court, the Defendants filed the RSA before the High Court. In the impugned judgment, the High Court held that no substantial question of law arises warranting interference in the

matter and dismissed the RSA being devoid of any merit. Aggrieved by the same, the Defendants No.2 and 3 who claim to be bonafide purchasers have approached this Court by filing this appeal.

8. Learned counsel for the Appellants has contended that findings of the Trial Court and the Lower Appellate Court declaring Krishna Kumar as sole legal heir is perverse because he was having one brother Kailash Nath and sister Prakash Lata. The Plaintiffs acquiesced the rights of Defendants No.2 & 3 by not filing suit for cancellation of sale deed after purchase of the subject property and during construction went on for a year. There cannot be any reasonable basis or to have any suspicion and doubt regarding the bonafide purchase of the subject property from the Defendant No.1. The said purchase was after due diligence and on verification of the house tax assessment record of the year 1992-93 as maintained by Municipal Committee, Firozpur City. Water bills and electric bills were all in the name of Defendant No.1. Thus, on the advice of the advocate and after taking loan from the bank, a non-encumbrance certificate was issued and a public notice was published by Defendant No.1-Nand Kishore in the newspaper 'Aaj Di Awaz',

Jalandhar dated 11.01.2016 specifically referring the document of title i.e. Will dated 09.12.1975. The Appellants have also submitted that their rights as bona fide purchaser have been ignored by the Courts below so much so that the decree is silent as to the fate of consideration paid by them leading to unjust enrichment at the cost and peril. Learned counsel for the appellants further urged that Plaintiffs have approached the courts below with unclean hands as they concealed the material facts from the courts below that Krishna Kumar was earlier married to Bimla Rani and out of this wedlock Nand Kishore and Hem Rani were born. This fact is not disclosed in the suit for possession intentionally with ulterior motive. Lastly, it was asserted that here is no material available on record to prove that the Sushila was the legally wedded wife after the death of Bimla Rani (mother of Defendant no.1).

9. Per contra, learned counsel for the Respondents contends that it was upon Defendants to prove that the Plaintiffs have concealed material facts from the courts below, however, the issue with respect to concealment of facts was not pressed during the time of arguments before Trial Court thus the issue was decided in

favour of Plaintiffs. Hence, in view of the issue having attained finality, the Appellants at this stage cannot allege that Petitioners approached the courts below with unclean hands. The Respondents also submitted that the three-Courts below recorded the finding of fact proving the Will executed by Krishna Kumar in favour of second wife Sushila Kumari. The Will dated 09.12.1975 executed by Late Lahori Ram in favour of Defendant no.1 has not been proved. In any case, Krishna Kumar being sole owner alienated his right to Sushila Kumari and no right vests to Defendant no.1 by virtue of the said Will. Therefore, Defendants no.2 & 3 cannot acquire any title from Defendant no.1. Thus, the finding as recorded by three-Courts are neither perverse nor illegal and do not warrant any interference in this appeal.

10. After having heard learned counsel appearing for the parties and on perusal of the record, it is apparent that the Defendants No.2 & 3 are claiming the right in the subject property being bonafide purchasers from Defendant No.1-Nand Kishore by virtue of registered sale deed dated 04.05.2006 after payment of the amount of consideration of Rs.3,40,000/-. Only right, title and interest,

which is vested in Defendant No.1 can be transferred to Defendants No.2 & 3. It is not in dispute that Lt. Pt. Lahori Ram was the owner of the subject property who died on 21.10.1977. The Lt. Lahori Ram executed two Wills, first is on 15.11.1957 in favor of Krishna Kumar and another on 09.12.1975 in favor of Defendant No.1-Nand Kishore. As per the findings recorded by three courts below, both the Wills have not been proved, therefore, the right, title and interest vested in Lt. Lahori Ram has not been transferred by virtue of those Wills. In consequence, Krishna Kumar being sole legal heir acquired title in the property which was bequeathed by Will dated 20.10.1993 in favor of Sushila Kumari. The said Will is found proved by the two-Courts and those findings were upheld even by the High Court. The plea taken in appeal with respect to having two other legal heirs of Pt. Lahori Ram in addition to Krishna Kumar was not found merit by the Lower Appellate Court. We are of the view that if upon the subsequent knowledge Defendants discovered that Krishna Kumar was not sole legal heir of Lt. Pt. Lahori Ram, an amendment in the written statement should have been proposed by the Defendants joining other legal heirs of Lt. Pt. Lahori Ram as a

party, but no such steps were taken by the Defendants. Thus, the Court found that Krishan Kumar being sole owner inherited subject property of Lt. Pt. Lahori Ram having right to execute Will in favor of Sushila Kumari who resided as a wife and from the said wedlock Plaintiffs were born. The Will executed in favor of Sushila Kumari was found proved. Thus, Sushila Kumari became sole owner on the basis of the proved Will dated 20.10.1993 and Plaintiffs received from her after death. In such circumstances, it is clear that the Defendant No.1 was not having any title and interest in the property, therefore, he cannot pass the title which he does not have. Thus, on the basis of the sale deed executed on 04.05.2006 by Defendant No.1 in favor of Defendants No.2 & 3 they cannot acquire better title than that of Defendant No.1. Further, the Plaintiffs have not per se challenged the Sale Deed dated 04.05.2006 except to contend before the Courts below to 'ignore' the same. Simultaneously, the Defendants have taken the ground of not adjudicating the rights of innocent bonafide purchasers qua the subject property after payment of lawful consideration and carried out fresh construction without any hindrance by anyone. In view of

the same, we are not commenting on the validity of Sale Deed and keeping it open for the Appellants to take recourse as permissible under the law.

11. Considering the aforesaid, in our considered opinion, the findings as recorded by the two-Courts below concurred by the High Court do not suffer from any perversity or illegality giving rise to exercise the jurisdiction under Article 136 of the Constitution of India. In view of the foregoing, this appeal is bereft of any merit and hence dismissed.

.....J.
(INDIRA BANERJEE)

.....J.
(J.K. MAHESHWARI)

New Delhi;
July 05, 2022