

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

**CSA No. 04/2008
CMP No. 06/2008**

Date of Decision:30.12.2010

Jaswant Singh

Vs.

Ranjit Kour

CORAM:

MR. JUSTICE J. P. SINGH, JUDGE.

Appearing Counsel:

For Appellant(s) : Mr. S.S.Lehar, Sr. Advocate with
Mr. Meharban Singh, Advocate.

For Respondent(s): Mr. Surinder Singh, Advocate.

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| i) | Whether approved for reporting in Press/Journal/Media | : | Yes/No |
| ii) | Whether to be reported in Digest/Journal | : | Yes/No |
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The appellant-Jaswant Singh filed a Suit for permanent prohibitory injunction restraining the respondent-Ranjit Kour from alienating House comprising of three rooms, one bath room and a latrine situated at Hazuri Bagh, Jammu, on the plea that he had constructed it out of his own funds, and the respondent, his brother's widow, who was allowed to live and reside therein, as a licensee, had no right to dispose it of.

Contesting the Suit, the respondent pleaded the Suit house to have been constructed by her husband on the land which had fallen to his share, denying that she was living there with the permission of the appellant.

To decide the Suit, the parties were put to issues, which are reproduced hereunder:-

- 1} Whether the plaintiff is exclusive and real owner of the house comprised of three rooms, one bath room, one latrine situated at Hazuri Bagh, Gole Gujral, Jammu and defendants are selling the house without any legal right?
OPP
- 2} Whether mother of the plaintiff Smt. Mathri Devi executed a Will Deed in favour of plaintiff with respect to the Suit property on 07.11.1988 and registered on the same day by the Sub-Registrar, Jammu, if so, what is its effect?
OPP
- 3} If Issue No.1 is not proved in affirmative, whether the Suit house is exclusively constructed, owned and possessed by defendant and she has right to alienate it?
OPD
- 4} Relief.

After appreciating the evidence, which the parties to the Suit had led, the trial Court came to the conclusion that the plaintiff had failed to prove his ownership over the Suit house. The Will executed by the appellant's mother in his favour, though held proved, was not relied upon by the Court as it stood questioned by the children of the respondent before the 1st Additional Munsiff, Jammu and even otherwise did not pertain to the house in question. The

appellant's Suit was accordingly dismissed vide Judgment dated August 30, 2005.

The 1st Appellate Court too did not find any merit in the appellant's Appeal and therefore dismissed it vide its Judgment of November 12, 2007.

The finding returned by the trial Court that the appellant had proved the Will executed by his mother in his favour, was, however, found untenable by the 1st Appellate Court because the Will was not found by it to have been proved, as required by law.

The Decrees and Judgments recorded by the trial Court and the 1st Appellate Court have been questioned by the appellant in this Civil Second Appeal.

The appellant's learned counsel seeks the admission of the Appeal to hearing, which according to him, raised following substantial questions of law :-

- 1} Whether the house having been constructed on the property left by Mathri Devi, gives any right to the respondent to claim ownership over it?
- 2} Whether the Will, not specifically disputed by the defendant, was required to be proved in accordance with law?
- 3} Whether the appellant had become owner of the property by operation of the Will and the respondent had no right to alienate it?

Learned counsel for the respondent, on the other hand, submitted that the Second Appeal was not maintainable against concurrent findings of fact recorded by the two Courts and that it did not raise any substantial question of law because the questions raised by the appellant were not substantial questions of law.

Considered the submissions of learned counsel for the parties and perused the judgments of the Courts below.

The appellant, through his Suit, had sought a permanent injunctive direction against the respondent pleading that he was the owner of the Suit house because it was he who had raised its construction. To support his plea of ownership over the Suit house, he had additionally relied upon the Will executed by his mother in his favour.

The appellant neither produced the Scribe of the Will nor the persons who are shown to have witnessed it. The finding of the Appellate Court that the Will was not proved by the appellant is, therefore, unexceptionable. Both the Courts have concurrently held on facts that the appellant had failed to prove him to have constructed the house which on the basis of the evidence led by the parties, was found to have been constructed by the respondent's husband.

In these circumstances, no substantial question of law as contemplated by Section 100 of the Code of Civil Procedure, arises in the case.

The questions proposed by the appellant in the Memo of Appeal as substantial question of law, neither arise out of the case nor can these, by any stretch of reasoning, be said to be substantial questions of law.

In terms of the provisions of Section 100 of the Code of Civil Procedure, a Civil Second Appeal lies only if it involved substantial questions of law.

The appellant's Appeal having been found not to raise any substantial question of law, still less a question of law may not thus warrant its admission to hearing, for the findings of fact recorded by the two Courts, are otherwise well merited.

This Civil Second Appeal is, therefore, dismissed in limine.

(J. P. Singh)
Judge

JAMMU
30.12.2010
Pawan Chopra*