

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RSA No.18/2010**

% **29th August, 2011**

LATE SHRI HARKISHAN SINGH THRU LR

SHRI GURJEET SINGH & ORS.

..... Appellants

Through: Mr. V.Shrivastava, Adv.

VERSUS

SHRI RAM PRAKASH DUA & ORS.

..... Respondents

Through: Mr. Inderjeet Swaroop, Adv.

for the respondent no.1.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this Regular Second Appeal is to the impugned judgment dated 13.10.2009 of the Appellate Court, and by which judgment, the Appellate Court dismissed the appeal of the appellants and confirmed the judgment and decree dated 2.5.2006 passed by the Trial Court decreeing the suit for possession with respect to the suit property admeasuring 73 square yards, bearing municipal no. A-547, Shastri Nagar, Sarai Rohilla, Delhi.

2. The facts of the case are that one Sh. Asa Ram Dua, father of the plaintiff owned a property admeasuring 150 square yards in khasra no.484/17, Village Sidhore Kalan, Dabur Wala, Delhi jointly with his brother Sh. Jiwan Dass. After partition between Sh. Asa Ram Dua and Sh.Jiwan Dass, Sh. Asa Ram Dua became the owner of 73 square yards of the property, i.e. the subject property. Sh.Asa Ram Dua left behind the plaintiff, Ram Prakash Dua as a son. Sh. Asa Ram Dua also had another son, Sh. Sunder Lal Dua and two daughters, Smt. Ram Pyari and Smt. Kamlesh Sachdeva. Sh.Sunder Lal Dua and two daughters Smt. Ram Pyari and Smt. Kamlesh Sachdeva are said to have executed a relinquishment deed dated 17.11.1995 in favour of the plaintiff/respondent no.1.

3. The case which was set up in the plaint was that the plaintiff was the legal heir of Sh.Asa Ram Dua and therefore entitled to possession of the suit property from the original defendant one Sh. Harkishan Singh, who is now represented by his legal heir (namely the appellant no.1) on the ground that late Sh. Harkishan Singh was the brother of Smt.Raj Kaur @ Raj Rani, and Smt. Raj Kaur @ Raj Rani was the wife of one of the son, Sh.Sunder Lal Dua of Sh. Asa Ram Dua. It was alleged that on the death of his sister Smt. Raj Kaur @ Raj Rani, Sh. Harkishan Singh had come into the possession of property and which was being illegally held on. Since ownership in the property was claimed by the respondent no.1/plaintiff on

the ground that Sh. Harkishan Singh has no right to the property, the relief of possession was claimed.

4. When the written statement was filed, it transpired that Sh. Harkishan Singh was claiming ownership of the property by virtue of the Will dated 9.9.1983 allegedly executed by Sh. Asa Ram Dua in favour of Smt. Raj Kaur @ Raj Rani (wife of his son Sh. Sunder Lal Dua) and the alleged Will dated 10.6.1995 of Smt. Raj Kaur @ Raj Rani executed in favour of Sh. Harkishan Singh. The defendant, Sh. Harkishan Singh stated that he had already sold the property vide notarized documents being the agreement to sell, power of attorney, etc. dated 4.12.1995 to one Sh. Richpal Singh. It transpires that the property has thereafter changed various hands, though unfortunately none of the counsels for either of the parties could assist the Court or throw any light whether as to such transfers were made before filing of the suit or after filing of the suit. All the subsequent transferees were thereafter impleaded as defendants in the suit because the original defendant Sh. Harkishan Singh had transferred the property to Sh. Richpal Singh who in turn transferred the property to Smt. Archana Batra and by various subsequent documentations, ultimately, the property presently is said to be vested in Smt. Mislal Devi and Sh. Ashit Babu Satija, defendants no. 4 and 6.

5. The only issue which arose before the Court below, and which is also an issue which is argued before me is as to whether Sh. Asa Ram Dua has executed his Will dated 9.9.1983 in favour of Smt. Raj Kaur @ Raj Rani wife of Sh. Sunder Lal Dua. If this Will was not a genuine Will, then, Smt. Raj Kaur @ Raj Rani could not have executed her Will dated 10.6.1995 in favour of her brother Sh. Harkishan Singh who would therefore have no right to transfer the property to the subsequent transferees, the other defendants in the suit.

6. The Appellate Court has given cogent and convincing reasons for holding that Will dated 9.9.1983 is not a genuine Will and that the same is shrouded in suspicious circumstances. Paras 11 to 15 of the impugned judgment of the Appellate Court are relevant and read as under:-

“11. Late Asa Ram Dua, admittedly, disinherited his two sons and two daughters and bequeathed the suit property to Smt. Raj Kaur @ Raj Rani, his daughter-in-law vide the alleged Will dated 9.9.1983. Admittedly, there is no explanation whatsoever, as to why late Shri Asa Ram considered it fit or necessary to disinherit his own bold relations-the sons and daughter. In normal circumstances, executant of a Will gives or assigns the reasons when he/she takes such a drastic decision. May be Smt. Raj Kaur @ Rajrani was serving the executants late Shri Asa Ram, but at the same time, there is nothing on record to suggest that he had any dispute or difference(s) or any strained relations with his own sons and daughters. There is also nothing on record to suggest that he was unhappy with their conduct towards him. The absence of any explanation for disinheritance of his own children, therefore, does raise a question mark. Further, even if late Shri Asa Ram was more sympathetic towards

Smt. Raj Kaur @ Rajrani, because his son Sunder Lal Dua had got remarried and was staying with his second wife, he (late Asa Ram Dua) could have given a right to her for her lifetime only.

12. Admittedly, Smt. Raj Kaur @ Raj Rani or Harkishan Singh did not disclose the execution of the said Will by late Asa Ram to any of their relations. Admittedly, Harkishan Singh was aware of the said Will and in the House-Tax records of MCD, his name was shown as PPO and, therefore, he was under obligation to produce the said Will before the MCD authorities when Respondent/Plaintiff moved an application for mutation of his name in the records. This failure on the part of Harkishan Singh also raises another question mark on the Will in question.

13. Another important fact is regarding the attestation of the Will. One attesting witness, namely, Gopal Dass, has been examined as DW1. He has given his address in the Will as 3/54, Rohtak. In his cross-examination, he testified that he had stayed/resided in Rohtak from 1947 to 1982. He also admitted in his cross-examination that he was not residing in Rohtak on 9.9.1982 and was at Delhi only. He has admitted that he sold his house at Rohtak in the year 1983 or 1984 and that his sons were working with the brothers of Defendant Harkishan Singh. He has given no explanation as to why he gave his address as that of Rohtak on 9.9.1983, when in fact he was residing in Delhi at that time. He admitted in his further cross-examination that Asa Ram had not called him on 9.9.1983 and he went on his own to his shop in the afternoon. There is just no reason or explanation as to why he went to his shop on that day. DW Gopal Dass claimed that late Asa Ram had asked him to be a witness to the Will, that day only. There is no explanation as to whether Asa Ram knew that he (Gopal Dass) was coming to meet him and whether he met Asa Ram on that day only and if so, at what place. **It is interesting to observe that Gopal Dass had last met Asa Ram about two years ago (before 9.9.1983) in a Kirya. It is also interesting to observe that Gopal Dass did**

not know when late Asa Ram died. He did not attend his cremation also. He has testified that he came to know about late Asa Ram's death after three or four years. It, therefore, appears very strange that Gopal Dass, who was neither close to Asa Ram nor was called by Asa Ram and had last met Asa Ram two years before that day, yet he happened to become a witness to the execution of the Will.

Further, DW Gopal Dass has admitted that his signatures on the Will dated 9.9.1983 and Affidavit in the Court differ. Though, he tried to explain that there was difference in signatures due to age factor but the same is not a convincing explanation. No doubt, technically an attesting witness can prove the execution of a Will, but when there are question marks regarding the circumstances in which such a person happens to be a witness, doubt is bound to be created and that is precisely the reason why Trial Court considered it a suspicious circumstance.

14. It is also observed that Smt. Raj Kaur @ Rajrani executed the Will on 10.6.1995. In her Will she has not described as to how she has become owner of the suit property. It, therefore, appears that there was some deliberate attempt, to not to disclose the Will dated 9.9.1983. Further, the Will dated 9.9.1983 was executed just four months prior to death of Asa Ram, and the Will dated 10.6.1995 was executed by Smt. Raj Kaur @ Rajrani just two months prior to her death. These circumstances cannot be a mere coincidence. Neither Asa Ram nor Smt. Raj Kaur @ Rajrani could have known that they were going to die shortly thereafter. There is thus a big question mark about the time and period of execution of the said two Wills. Another important circumstance is that Shri Harkishan Singh, after becoming the owner of suit property on the basis of Will dated 10.6.1995 did not lose much time in selling/transferring the same. There must have been some reason in transferring/selling the suit property in haste (within six months of the Will & four months of the death of Smt. Raj Kaur @ Rajrani). Apparently, Harkishan Singh apprehended trouble from the sons and daughters of late Shri Asa Ram.

15. Interestingly, Smt. Raj Kaur @ Rajrani in her Will has not stated about her legal heirs. She has, also, not mentioned about her other brothers and the reason, why she preferred only Harkishan Singh to her other brother. This is also a major suspicious circumstance, particularly because Harkishan Singh did not take long to dispose of the property. He sold the property on 4.12.1995 i.e. within four months of the death of Smt. Raj Kaur @ Rajrani.”(underlining added)

7. The aforesaid paragraphs show that late Sh. Asa Ram Dua gave no reason to disinherit his other son/plaintiff and daughters namely Smt. Ram Pyari and Smt. Kamlesh Sachdeva. The Trial Court has rightly observed that merely because one of the relative may be closer than other relatives, in itself is not a sufficient reason to disinherit the other close relatives, i.e. son and daughters with whom there were no bad relations. The Trial Court has also referred to the short period of time within which the Wills of Sh. Asa Ram Dua and Smt. Raj Kaur @ Raj Rani surfaced after the death of Smt. Raj Kaur @ Raj Rani and the property in question was sold by Sh. Harkishan Singh on 4.12.1995, i.e. within a few months of death of Smt. Raj Kaur @ Raj Rani on 15.8.1995. In addition to the aforesaid facts, I may note that I put a query to counsel for the appellants that if really Smt. Raj Kaur @ Raj Rani had become the owner of the property by virtue of the Will dated 9.9.1983 of Sh. Asa Ram Dua, then why was not the Will propounded (for a huge period of over ten years from 10.1.1984, when Asa Ram Dua is stated to have died, till 15.8.1995 when

Smt. Raj Kaur @ Raj Rani is stated to have expired) before any public authority during lifetime of Smt. Raj Kaur @ Raj Rani and why no mutation was applied for on the basis of the Will dated 9.9.1983 in favour of Smt. Raj Kaur @ Raj Rani, however, no answer was forthcoming.

8. The Trial court has also noted that the attesting witness to the Will was one Sh. Gopal Dass who deposed as DW1 and who deposed that he only had a casual relation with Sh. Asa Ram Dua and in fact Sh. Asa Ram Dua had not called him on 9.9.1985 when the Will was executed. The only meeting of the witness, Sh. Gopal Dass with Sh. Asa Ram Dua was in a kirya about two years before the alleged execution of the Will dated 9.9.1983. Sh. Gopal Dass did not know when Sh. Asa Ram Dua died and nor did he attend his cremation. These facts according to the Trial Court cast a doubt on the validity of the Will. Even in the Will of Smt. Raj Kaur @ Raj Rani dated 10.6.1995, it is not mentioned as to how she had become owner of the property, the object being not to disclose the Will dated 9.9.1983 of Sh. Asa Ram Dua in her favour.

9. Learned counsel for the appellants argued that the Trial Court has wrongly observed the fact that Will is not registered and is not on stamp paper is a suspicious circumstance and also that there is no finding with regard to the lack of genuineness of Will dated 9.9.1983 and thus the impugned judgment is liable to be set aside. Of course, I do agree with

this argument that the conclusion of the Appellate Court contained in para 17 of the impugned order of the Will being doubtful because it is not registered or stamped is not correct, however, there are other convincing reasons given by the Appellate Court in paras 11 to 15 of the impugned judgment which have already been reproduced above, and which in my opinion are sufficient grounds to hold lack of genuineness of the Will dated 9.9.1983 allegedly executed by Sh. Asa Ram Dua. It is obvious that the Wills, dated 9.9.1983 of Sh. Asa Ram Dua and 10.6.1995 of Smt. Raj Kaur @ Raj Rani, were fabricated by Sh. Harkishan Singh after the death of his sister Sh. Raj Kaur @ Raj Rani, so as to misappropriate the suit property, and which property he sold within a few months of the death of Smt. Raj Kaur @ Raj Rani.

10. Learned counsel for the appellant additionally argued that the plaintiff/respondent no.1 in his cross-examination admitted that Sh. Harkishan Singh was the owner and therefore on this ground itself it should be held that the suit was liable to fail because of Sh. Harkishan Singh being admitted as the owner, the suit for possession cannot lie. The argument appears to be interesting only at the first blush, inasmuch as, the witness, i.e. plaintiff/respondent no.1 was about 72 years when he deposed, and his cross-examination took place in Hindi which was thereafter translated to English and it is possible that in translation

something had been left amiss and possibly the suggestion to which the alleged admission seems to have been given actually was that 'After the death of Raj Kaur, Harkishan Singh has claimed to be the owner'. After all the suit which was being contested to the hilt at every stage, it cannot be said that the respondent no.1/plaintiff had just in one line of the cross-examination sought to concede the complete case of the defendant/appellant. I may also note that out of the 5 appellants in the Appellate Court, only 3 have filed the present appeal and other 2 appellants in the first Appellate Court have been sued in this Court as respondents, who have not filed any appeal against the impugned appellate order dated 13.10.2009.

11. Issues of appreciation of evidence are not issues which can create a substantial question of law for the purpose of Section 100 of the CPC. Before I proceed to entertain a second appeal under Section 100 CPC, a substantial question of law must arise. In every case there are various factors/pros and cons in favour of one party and other factors/pros and cons in favour of other party. After assimilating all the facts, a Civil Court decides the case on balance of probabilities. In my opinion, the balance of probabilities show that the Wills of Sh. Asa Ram Dua dated 9.9.1983 and Smt. Raj Kaur @ Raj Rani dated 10.6.1995 cannot be said to be genuine Wills.

12. In view of the above, no substantial question of law arises.
Dismissed.

AUGUST 29, 2011
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VALMIKI J. MEHTA, J.