

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No. 2884 of 2015 (O&M)
Date of decision: July 28, 2015

Rajiv Kumar

.. Petitioner

v.

Rakesh Kumar and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Anil Kshetarpal, Senior Advocate with
Mr. Saurabh Garg, Advocate for the petitioner.
Mr. Ajay Jain, Advocate for respondent No. 1.

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Rajesh Bindal J.

Challenge in the present petition is to the order dated 23.4.2015, passed by the learned court below, whereby in a suit filed by respondent No.1-plaintiff, in an application filed by the Investigating Officer in FIR No. 608 dated 1.9.2014, registered under Sections 323/452/506/382/419/420/467/471/474/120B IPC, at Police Station Thanesar City, District Kurukshetra, direction has been given for handing over the original Will lying in custody of the Court to the Assistant Sub Inspector for examination by Forensic Science Laboratory, Madhuban. The direction is for comparison of signatures appended on the Will.

Learned counsel for the petitioner submitted that Sita Ram was survived by his widow Tara Wanti, four sons and two daughters. He died on 29.6.2006. He had executed a Will dated 13.1.2005 in favour of his wife Tara Wanti. On the basis of the Will, Tara Wanti sold some part of the property and some was given as a gift. She executed a Will on 28.11.2006 in favour of his two sons, namely, Rajiv Kumar and Parmod Kumar,

ignoring two other sons, namely, Rakesh Kumar and Dinesh Kumar and two daughters, namely, Sushma and Shalini. The suit was filed by respondent No. 1-plaintiff for declaration claiming that he being class-I legal heir is entitled to share in the property owned by deceased-Sita Ram, his father, and the property left by her mother by way of inheritance. The suit was filed on 6.3.2013. During the pendency thereof, respondent No. 1-plaintiff also got FIR No. 608 dated 1.9.2014, registered under Sections 323/452/506/382/419/420/467/471/474/120B IPC, at Police Station Thanesar City, District Kurukshetra, *inter-alia*, alleging that the accused had forged the Wills of Sita Ram and Tara Wanti. The original Wills were submitted in court in the civil suit. The Investigating Officer in the FIR filed application for handing over the Will executed by Sita Ram for investigation of the criminal case so as to enable the investigating agency to get the signatures on the Will compared from Forensic Science Laboratory, Madhuban. The same was allowed by the learned court below vide impugned order.

He further submitted that validity of the Will is in question in the civil suit filed by respondent No. 1-plaintiff. The same cannot be gone into either by investigating agency or by the criminal court, hence, the original Will should not be handed over to the Investigating Officer for the purpose of comparison of signatures/thumb impressions appended thereon. In case the Will goes out of the custody of the court, there are chances of its loss or tampering. Even in the civil suit, the parties to the dispute are always at liberty to get expert opinion. The science for comparison of thumb impressions or signatures is not perfect. Finally, the court has to form its opinion. No doubt, civil and criminal cases can go together, however, finding of the criminal court is not binding on the civil court, whereas it is not vice-versa. Once the civil litigation was already pending for the same issue, criminal proceedings on the same facts should not be permitted to continue. The Investigating Officer in the criminal case, being not a party in the civil litigation, could not file any application. In support of his plea, reliance was placed upon a judgement of this court in Naranjan Singh and another v. State of Punjab and others, 2014(2) PLR 677.

On the other hand, learned counsel for respondent No. 1 submitted that the only apprehension raised by the petitioner is that there may be chances of tampering of the Will. The same can be taken care of. The court can directly send the Will to Forensic Science Laboratory for examination. In case, the Investigating Agency is not allowed to get the Will examined from Forensic Science Laboratory, it will not be able to complete the investigation and present challan. There is no illegality in the impugned order. In case, it is set aside, the same will be mis-used as in any case, where criminal offence is *prima facie* made out, the party can file civil litigation, submit original documents in court and then stall the investigation in criminal case. However, he did not dispute that findings of the criminal court are not binding on the civil court.

Heard learned counsel for the parties and perused the paper book.

The dispute is between the family members pertaining to property left by Sita Ram (deceased) and Tara Wanti (deceased) (widow of Sita Ram). They were survived by four sons, namely, Rakesh Kumar, Dinesh Kumar, Rajiv Kumar and Parmod Kumar and two daughters, namely, Sushma and Shalini. Sita Ram died on 29.6.2006. It is claimed that prior to his death, he executed an unregistered Will on 13.1.2005 in favour of his wife Tara Wanti. It was signed by three sons and two daughters, except Dinesh Kumar, as he was abroad at that time. Tara Wanti executed registered Will on 28.11.2006 in favour of his two sons, namely, Rajiv Kumar and Parmod Kumar. She died on 22.7.2012. Respondent No. 1-plaintiff filed the suit claiming share in the family property alleging that both Sita Ram and Tara Wanti died intestate, hence, he has a right to share the property. The suit was filed on 6.3.2013. During the pendency thereof, he got FIR No. 608 dated 1.9.2014, registered under Sections 323/452/506/382/419/420/467/471/474/120B IPC, at Police Station Thanesar City, District Kurukshetra alleging forgery of both the Wills. During investigation of the aforesaid FIR, the Investigating Officer filed application before the learned court below for handing over the original Will dated 13.1.2005 allegedly executed by Sita Ram and certain signed blank cheques of Sita

Ram (deceased). The application was contested by the petitioner claiming that any document in custody of the court in a civil case cannot be handed over to the police authorities. The original Will is subject-matter of dispute in civil litigation, where the validity thereof has to be decided. The validity of the Will can be decided only by the Civil Court after the parties lead their evidence. After hearing counsel for the parties and learned State counsel appearing for the Investigating Officer in the FIR, the court below found that blank cheques, as alleged in the application filed by the Investigating Officer, were not on judicial file, hence, prayer for handing over the same was declined. The original Will was directed to be handed over to the Investigating Officer in a sealed cover for sending the same to Forensic Science Laboratory for comparison of signatures on the Will while retaining a photo copy thereof. He was directed to return the original Will in court within 30 days. It is the aforesaid order, which has been impugned in the present petition.

In the suit filed by respondent No. 1-plaintiff, specific challenge has been made to the Wills, namely, one executed by late-Sita Ram on 13.1.2005 and other executed by Tara Wanti on 28.11.2006. The challenge having been made by the plaintiff, the onus to prove that the Wills are forged and fabricated is on him.

More than one year after filing of the suit, FIR was got registered on 1.9.2014, when the case was at the stage of filing of replication by the plaintiff. By getting the Will examined by Forensic Science Laboratory through prosecuting agency in the criminal case got registered by respondent No. 1-plaintiff after filing of the suit, the effort seems to be to shift the burden of proving that the Will is forged and fabricated on the prosecuting agency in the criminal case. It is nothing else but collection of evidence. The findings of criminal court are not binding on the civil court. Reference can be made to the judgment of Hon'ble the Supreme Court in Shanti Kumar Panda v. Shakutala Devi, (2004) 1 SCC 438. However, judgments of civil court would be relevant if conditions of any of the Sections 40 to 43 of the Indian Evidence Act are satisfied, but it cannot be said that the same would be conclusive except as provided in

Section 41 thereof. Reference can be made to the judgments of Hon'ble the Supreme Court in K.G.Premshanker v. Inspector of Police, 2002(4) RCR (Criminal) 596 and Guru Granth Saheb Sthan Meerghat Vanaras v. Ved Parkash and others, 2013(2) RCR (Civil) 924.

It is not the case where the prosecution in the criminal case was going on first and thereafter the civil suit was filed, rather, it is a case where the civil suit was already pending for about 1-1/2 years when the FIR was got registered. The primary issue in the civil suit is regarding validity of the Will. Mere report from Forensic Science Laboratory may not be sufficient to opine that the Will was forged and fabricated. This Court in Naranjan Singh's case (supra) opined that once validity of a Will had been decided in one case and the genuineness thereof is pending in other litigation, then power to determine the genuineness and validity or otherwise of the Will cannot be left to the police. The order passed by the trial court permitting the police to send the Will to Forensic Science Laboratory in the pending criminal case, was set aside.

For the reasons mentioned above, in my opinion, the impugned order passed by the court below is not legally sustainable, hence, the same is set aside. The petition stands disposed of, accordingly.

(Rajesh Bindal)
Judge

July 28, 2015
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(Refer to Reporter)