
IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R.S.A.No. 590 of 1989

Date of decision: 07.08.2015.

Nar Singh Dass

....Appellant

Versus

Vir Bhan

...Respondent

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA.

Present: Mr. Vinod S. Bhardwaj, Advocate and
Ms. Avnika Gupta, Advocate for the appellant.

G.S.SANDHAWALIA, J.(Oral)

The present Regular Second Appeal is directed against the judgment and decree dated 17.1.1989 passed by the Lower Appellate Court, Sonapat whereby the appeal of the defendant was allowed and the suit of the plaintiff was dismissed on the ground that he was not legal heir of Bahadur Chand.

A suit for recovery of ₹ 2800/- plus interest to the tune of ₹ 1000/- was filed on the basis that two pronotes for ₹ 1400/- each had been executed by Vir Bhan, defendant in favour of Bahadur Chand on 25.8.1980. The said Bahadur Chand had expired on 11.10.1980 and the suit was filed on 26.8.1983 the strength of unregistered will dated 23.6.1980 that the plaintiff was to succeed to all the properties left by Bahadur Chand deceased. The defendant-respondent admitted the factum of pronotes but took the plea that amount had been paid back for which he also examined two witnesses, namely, Gopi Ram and Ram Bhaj as DW2 and DW 3 respectively.

The trial Court framed the following issues:-

- “1. Whether the defendant had repaid the loan taken vide pronotes dated 25.8.1980 as alleged?OPD

2. Whether the plaintiff is the legal heir of Bahadur Chand deceased, if so its effect?OPD
3. Whether the suit is barred by limitation?OPD
4. Relief.”

The trial Court came to the conclusion that the evidence of the said witnesses as to whether amount had been repaid or not was not trustworthy and once the plea had been taken by the defendant, it was incumbent upon him to prove that the amount had been repaid but he had failed to discharge the onus. Accordingly, issue no.1 was decided in favour of the plaintiff-appellant and against the defendant-respondent. On issue no.2 regarding the right to file the suit, it was held that right to file the suit was on the basis of negotiable instrument and therefore by virtue of will the plaintiff had a legal right. Reference was also made to the mutation in favour of the plaintiff and order dated 3.8.1984 passed by the Assistant Collector Ist Grade, Gohana whereby the mutation had been sanctioned in his favour. Resultantly the suit was decreed by the trial Court for a sum of ₹ 3800/- along with interest at the rate of 1% per month from the date of filing the suit till the date of full and final realisation.

The Lower Appellate Court had rightly noticed that the whole suit was based on the strength of execution of will which had never been proved in accordance with the provisions of Section 63 of the Succession Act, 1925. Attesting witnesses, namely, Des Raj and Amar Nath had never been produced and examined and therefore, under issue no.1 it was held that the plaintiff was neither a son nor a recognised heir of Bahadur Chand and therefore, his entitlement to file the suit was not recognised and the appeal was allowed by dismissing the civil suit.

The said factual aspect is not disputed that the only scribe of pronotes Baij Nath and Nar Singh Dass himself had appeared to prove the pronotes. The right to recover the amount was on the basis of will itself.

Once the will itself had not been proved by producing the original and in the absence of any succession certificate, the Lower Appellate Court was well justified in allowing the appeal and dismissing the suit. Once it has not been brought on record as to the entitlement of the plaintiff to file suit and the will itself had not been proved, the findings which had been recorded cannot be said to suffer from any illegality or infirmity which would warrant interference by this Court. The factum of pronotes was never denied as such but once locus of the plaintiff to file the suit being legal heir was denied and the onus was upon him, he should have examined the scribe or one of the attesting witness of the will and in the absence of the said evidence, the Lower Appellate Court correctly allowed the appeal. No substantial question of law arises which would require consideration by this Court.

It is, however, made clear that any finding recorded herein do not reflect on the right of the appellant regarding his claims on the strength of will since it has been pointed out that there is other litigation also which been initiated on account of the right to succeed to estate of Bahadur Chand. Accordingly, it is made clear that in the present appeal only right to file the suit for recovery on the strength of will has been decided.

Accordingly, the present appeal is dismissed.

August 07, 2015
Pka

(G.S.SANDHAWALIA)
JUDGE