

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**Regular Second Appeal No.3823 of 2010 (O&M)
Date of decision: 01.07.2015**

Ram Nand

.....Appellant

Versus

Chand Parkash and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

Present: Mr. K.L. Arora, Advocate,
for the appellant.

Mr. A.K. Ahluwalia, Advocate,
for the respondents.

Ritu Bahri, J.

Defendant No.3-appellant has come up in regular second appeal against the judgment dated 24.09.2009 passed by the District Judge, Faridkot, dismissing his appeal against the judgment and decree dated 11.02.2008 passed by the Civil Judge (Junior Division), Faridkot, whereby suit filed by the plaintiff-respondent No.1 has been decreed.

Chand Parkash-plaintiff filed a suit for declaration to the effect that Sham Sunder son of Khaga Ram was employed as Mali-cum-Chowkidar in Public Health Department, Faridkot and died on 21.07.2005. He was unmarried and had no child. Plaintiff is nephew of Sham Sunder. Sham Sunder had treated the plaintiff as his own son and used to live with him in village Dhuddi. Plaintiff had looked after his uncle. Sham Sunder

had made the plaintiff as his nominee in his LIC policy. He also nominated

the plaintiff as his nominee in the bank account, from where he used to take his salary. After his death, plaintiff had performed all the last rites of Sham Sunder. Sham Sunder had two brothers. His elder brother had pre-deceased him in the year 1995. Plaintiff and defendants are the children of Bishamber Dayal, other brother of Sham Sunder. Out of love and affection, Sham Sunder-deceased had executed an unregistered Will dated 1 Vasakh 2004 in favour of the plaintiff. The said Will was executed by Sham Sunder in the presence of the witnesses in his sound disposing state of mind and without any threat or coercion. As per the said Will, plaintiff was entitled to the movable and immovable property of Sham Sunder along with his service benefits, PPF, leave encashment, gratuity etc.

Upon notice, the defendant Nos. 1 and 2 (respondent Nos. 2 and 3 herein) filed written and admitted the claim of the plaintiff. Defendant No.3 (appellant herein) filed a separate written statement and had taken the preliminary objections with regard to maintainability of the suit, locus standi and suppression of material facts from the Court. It was stated that Sham Sunder had adopted him (defendant No.3) as his son and both of them used to live in one house at village Dhudhi as father and son. Sham Sunder treated him as his own son. When Sham Sunder fell ill, defendant No.3 had rendered the services of all types. It was further submitted that Sham Sunder had appointed defendant No.3 as his nominee in the department of Public Health, where he was serving as Mali-cum-Chowkidar.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether deceased Sham Sunder son of Khaga Ram executed an unregistered Will dated 01 Vasakh 2004 in favour of the plaintiff? OPP

2. If issue No.1 is proved, whether the plaintiff is entitled for declaration as prayed for on the basis of unregistered Will dated 01 Vasakh, 2004? OPP
3. Whether deceased Sham Sunder adopted defendant No.3 Nand Ram as his son, if so, its effect? OPD
4. Whether the suit is not maintainable in the present form? OPD
5. Whether the plaintiff has no locus standi to file the present suit? OPD
6. Whether the plaintiff has filed this suit on wrong facts? OPD
7. Relief.

The trial Court, after going through the evidence led by the parties, held that the plaintiff has duly proved the Will (Ex.P1) by leading sufficient and cogent evidence. Plaintiff himself appeared as PW-5 and examined the attesting witnesses of the Will namely Ram Chander (PW-2) and Babu Ram (PW-4). Nachhattar Singh, Scribe of the Will (Ex.P1) was examined as PW-3. All the witnesses of the plaintiff had stated in one voice that during his lifetime, Sham Sunder had executed a Will (Ex.P1) in favour of the plaintiff on 01 Vasakh, 2004. The attesting witnesses and scribe of the Will had stated that at the time of execution of the Will, the deceased was in his sound disposing state of mind and there was no pressure upon him. Sham Sunder had executed the Will (Ex.P1) with his sweet will in favour of the plaintiff. After hearing and understanding the contents of the Will, he had signed the same in the presence of marginal witnesses. On his asking, they had witnessed the Will by putting their thumb impression and signatures. Paramjit Singh (PW-1) had produced the bank record pertaining to the account of Sham Sunder-deceased. A perusal thereof, showed that

No.011900017136. Ex.P6 was the exact carbon copy of nomination form, which was filled by Sham Sunder. Execution of the Will was duly proved. Moreover, defendant Nos. 1 and 2 who are real brother and sister of the plaintiff, had admitted the execution of Will by Sham Sunder in favour of the plaintiff. Defendant No.3-appellant did not produce any document to prove that he was adopted by Sham Sunder. No evidence with regard to adoption ceremony was led. The trial Court decreed the suit filed by the plaintiff-respondent No.1. The lower appellate Court affirmed the findings returned by the trial Court and dismissed the appeal.

Along with this appeal, defendant No.3-appellant has also filed an application (CM No.11354-C of 2010) under Order 41 Rule 27 read with Section 151 CPC to place on record report of Handwriting Expert comparing the admitted and disputed signatures, which shows that the alleged Will dated 01 Vasakh, 2004 produced by the plaintiff, was forged and fabricated document.

The report of Handwriting Expert, which the appellant is seeking to place on record is dated 02.04.2010, in which the opinion of the Handwriting Expert is that the disputed signature Mark Q1 was forged signature and it was not similar in their writing characteristics with the standard signatures of Sham Sunder, marked as S1 to S10 and the disputed signature Q1 was not written by the same person, who had written the standard signatures. The defence taken by the present appellant before the trial Court was that the Will (Ex.P1) was a result of fraud and forgery. The plaintiff-respondent No.1 had proved the execution of the Will by examining Ram Chander (PW-2) and Babu Ram (PW-4), who were attesting witness of the Will. He had further examined Nachhattar Singh, Scribe of

nor before the lower appellate Court led any evidence to show that the Will (Ex.P1) had been executed on account of fraud and forgery. His defence was that he was an adopted son of Sham Sunder and he was entitled to all the service benefits of the deceased along with movable and immovable property. He did not lead any evidence with regard to adoption ceremonies, which were conducted by Sham Sunder. No snaps or other documents were produced to show that he was nominated by Sham Sunder in all the office documents, where he used to serve. The trial Court decreed the suit on 11.02.2008 and the lower appellate Court dismissed the appeal on 24.09.2009. As per the provisions of Order 41 Rule 27 CPC, following conditions have to be satisfied to allow a party to produce additional evidence.

“27. Production of additional evidence in Appellate Court- (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if-

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or;

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

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In the present case, this report does not fall in any of the above conditions, as mentioned in Order 41 Rule 27 CPC. The trial Court had not refused to admit this report earlier nor it is a case that despite due diligence, the evidence was not within the knowledge of defendant No.3-appellant.

This document is merely an opinion of the Handwriting Expert, which is not necessary to pronounce the judgment or any other substantial cause.

Plaintiff-respondent No.1, on the other hand, has proved the execution of the Will (Ex.P1) by leading cogent and convincing evidence in the form of deposition of attesting witnesses of the Will namely Ram Chander (PW-2) and Babu Ram (PW-4). Nachhattar Singh, Scribe of the Will (Ex.P1) was examined as PW-3. Report prepared by the Handwriting Expert, who was engaged by defendant No.3-appellant himself, will not be necessary for just decision of this case, as both the Courts have decreed the suit of the plaintiff.

After going through the impugned judgments passed by the Courts below, no illegality, much less perversity, has been found therein warranting interference by this Court.

No substantial question of law arises for consideration.

Dismissed.

01.07.2015
ajp

(RITU BAHRI)
JUDGE