

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

**1. RSA No.2322 of 2012 (O&M)
Date of Decision: 12.10.2015**

Kamlesh KumariAppellant

Versus

**Vijay Laxmi and others
.....Respondents**

2. RSA No.2323 of 2012 (O&M)

Kamlesh KumariAppellant

Versus

**Vijay Laxmi and others
.....Respondents**

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Ajay Singla, Advocate
for the appellant.

Mr. Rajiv Joshi, Advocate
for respondents No.1,7 and 8.

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

RAJ MOHAN SINGH, J. (Oral)

[1]. By this common judgment two Regular Second Appeals
i.e. **RSA No.2322 of 2012 titled as Kamlesh Kumari Vs. Vijay
Laxmi and others** and **RSA No.2323 of 2012 titled as Kamlesh**

Kumari Vs. Vijay Laxmi and others are being disposed of.

[2]. Since common questions of law and facts are involved in aforesaid two appeals, therefore, facts are being taken from RSA No.2322 of 2012.

[3]. Plaintiff Kamlesh Kumari is in second appeal against the judgment and decree dated 20.03.2012 passed by Additional District Judge, Jalandhar vide which appeal filed by her against judgment and decree dated 06.02.2010 passed by Civil Judge (Junior Division), Jalandhar was dismissed.

[4]. Plaintiff Kamlesh Kumari filed a suit for possession of the house comprised over an area of 4 marlas in Gali No.3, Upkar Nagar in the revenue estate of village Chak Hussiana, Lamba Pind, Tehsil and Distt. Jalandhar comprised in Khasra No.1242(2-4), Khewat No.476, Khatauni No.1804, Khasra No.1243 (2-8), Khewat No.727, Khatauni No.2089, Khasra No.1240(1-8), Khewat No.718, Khatauni No.2080 as per jamabandi for the year 2000-01 duly shown in the site plan with specific dimensions and for recovery of Rs.2000/- as a mesne profit w.e.f 24.06.2004 to 24.08.2004 for the use and occupation of the house in dispute along with future mesne profit @ Rs.1000/- per month from the date of institution of the suit till the recovery of the possession of the house and also for permanent injunction restraining defendant No.1 from alienating the house in question in any manner. Plaintiff alleged that she was married to Baldev Raj and out of said wedlock, one son i.e. defendant No.2

and four daughters i.e. defendants No.3 to 6 took birth. Baldev Raj purchased house in question vide registered sale deed dated 11.11.1998 for total sale consideration of Rs.93,000/- from Kulwinder Singh, Darshan Singh, Special attorney of Iqbal Singh, General attorney of Joginder Singh as fully detailed in the head note of the plaint. She further alleged that after the purchase of the house, Baldev Raj further constructed the house and started living therein. Defendant No.1 also started living with Baldev Raj in the house in question. When defendant No.1 started ignoring Baldev Raj, he executed a registered Will of house in question along with other properties in favour of plaintiff on 19.11.2003. The Will was witnessed by Chanan Singh, Lambardar of Mohalla Shiv Nagar, Jalandhar and Anil Kumar son of Sunder Lal, House No.NM-226, Mohalla Karar Khan, Jalandhar. The Will in question was scribed by Surinder Singh deed writer. The Will in question was executed by Baldev Raj in his free disposing mind, without any pressure or influence from any type. Plaintiff further alleged that Baldev Raj died on 07.12.2003 leaving behind plaintiff and defendants No.2 to 6 as his legal heirs. On death of Baldev Raj, plaintiff became owner of the property according to Will in question. Since defendant No.1 was residing in the house in dispute along with Baldev Raj, husband of the plaintiff, as a licensee, therefore, her licence was revoked by the plaintiff by giving oral notice of 15 days on 09.06.2004 and such possession

of defendant No.1 was claimed to be illegal over the house in question. Prayer was accordingly made for mesne profit @ Rs.1000/- per month from 24.06.2004 to 24.08.2004 along with future mesne profit from the date of institution of the suit till recovery of possession of the house in question. The suit was resisted by the defendants. Defendant-Vijay Laxmi claimed that she was legally wedded wife of Baldev Raj and defendants No.7 and 8 namely Ms. Bhawna Puri and Ms. Chandni Puri were born to defendant No.1 on 03.03.1997 and 16.06.2001 respectively out of her wedlock with Baldev Raj. Defendant No.1 along with defendants No.7 and 8 lived in the house in question with Baldev Raj and now they are in joint possession of the house in question after the demise of Baldev Raj along with other properties of Baldev Raj being Class-1 legal heirs of deceased Baldev Raj. The defendants claimed that they reserve their rights to claim share in other properties. Defendant No.1 is the mother and natural guardian of minor defendants No.7 and 8. Interest of defendants No.1, 7 and 8 are similar in the suit property and therefore, minor defendants No.7 and 8 are represented by defendant No.1.

[5]. The assertions made in the plaint were denied by defendant No.1. It was denied that plaintiff and Baldev Raj were ever married with each other or residing together. It was also denied that defendants No.2 to 6 were born to plaintiff out of any wedlock of her with Baldev Raj. On the other hand, she claimed

that she was legally wedded wife of Baldev Raj and defendants No.7 and 8 were born to her out of lawful wedlock with Baldev Raj. Execution of Will in question was denied being forged and fabricated document and was the result of conspiracy with the alleged witnesses.

[6]. After filing replication, trial Court framed the following issues:

“1 Whether the plaintiff was legally wedded wife of deceased Baldev Raj? OPP

2 Whether deceased Baldev Raj executed Will dated 19.11.2003 in favour of plaintiff? OPP

3 Whether defendant No.1 was legally wedded wife of deceased Baldev Raj? OPD

4 Whether the suit is not maintainable in the present form? OPD

5 Whether the suit of the plaintiff is bad for mis-joinder and non-joinder of necessary parties? OPD

6 Whether the suit of the plaintiff has not been properly valued for the purpose of Court fee and jurisdiction? OPD

7 Relief.”

[7]. In the trial Court, both the parties led evidence. Kamlesh Kumari herself appeared as PW 3 and also examined Anil Kumar as PW 1 and Chanan Singh as PW 2 and thereafter closed her evidence. On the other hand Vijay Laxmi defendant No.3 got herself examined as DW 1 and closed the evidence.

[8]. Trial Court dealt with issues No.1 and 3 jointly and held Kamlesh Kumari to be legally wedded wife of deceased Baldev Raj and thereafter, Baldev Raj married with Vijay Laxmi as his second wife. Recital in the Will Ex.P1 was taken to be the ground for holding such phenomena. Trial Court held that if Vijay Laxmi was the second wife of Baldev Raj then marriage of Vijay Laxmi with Baldev Raj was *void ab initio* as it was performed without dissolution of first marriage with the plaintiff. In view of aforesaid, it was held that Kamlesh Kumari was legally wedded wife of Baldev Raj and Vijay Laxmi cohabitated with Baldev Raj till his death in the house in question. Therefore, presumption was drawn that children born to Vijay Laxmi were born from the lion of Baldev Raj and on the basis of preponderance of probabilities, children namely Bhawna Puri and Chandni Puri were held to be children of Baldev Raj from Vijay Laxmi. Issues No.1 and 3 were decided accordingly, holding Vijay Laxmi not to be legally wedded wife of Baldev Raj but she lived with deceased Baldev Raj as his wife and children were born to her from deceased Baldev Raj.

[9]. Under issue No.2, execution of Will was not proved on the basis of testimonies of PW-1 Anil Kumar and PW-2 Chanan Singh. Trial Court observed that the credibility of these witnesses stood shattered and they were not found to be present at the time of execution of the Will. Baldev Raj was admitted in the hospital for 8-9 months prior to Will in question. Testimony of plaintiff showed that she actively participated in the execution of Will. No

evidence could come on record whether Baldev Raj was taken from hospital for the execution and registration of the Will in question, rather photo affixed on the first page of the alleged Will was doubted to be the same which were shown on the backside of the Will which was taken in the office of Sub Registrar. Since the plaintiff had admitted that Vijay Laxmi was living with Baldev Raj till his death and was taking care of Baldev Raj in the hospital, therefore, it was held that Baldev Raj was not residing with the plaintiff since long at village Dhannowal, rather he was living with defendant No.1 at Jalandhar. The testimonies of attesting witnesses were considered by the trial Court to hold that Will in question was a document shrouded with suspicious circumstances. The Will was disbelieved by the trial Court. The findings recorded by the trial Court on issue No.4 were discrepant inasmuch as that on the one hand suit was not held to be maintainable in the present form without getting declaration of ownership by the plaintiff but at the same time the issue was shown decided in favour of plaintiff and against the defendants. Trial Court held under issue No.5, the defendants did not lead any evidence that the suit was bad for mis-joinder and non-joinder of the parties. Under issue No.6, the suit for possession without affixing ad valorem Court fee was held to be not properly valued for the purposes of Court fee and jurisdiction. Since the plaintiff pleaded that the house was purchased by Baldev Raj for

a consideration of Rs.93,000/-, therefore, this issue was held in favour of defendants. Resultantly, suit was dismissed vide judgment and decree dated 06.02.2010 by the Civil Judge (Junior Divison), Jalandar.

[10]. Feeling aggrieved against the aforesaid judgment and decree passed by the trial Court, plaintiff as well as defendant No.1 filed two appeals before the Lower Appellate Court. Appeal No.1 i.e. **RCA No.79 of 2011** filed by Kamlesh Kumari and Appeal No.2 i.e. **RCA No.35 of 2010** filed by Vijay Laxmi and others. Lower Appellate Court decided both the appeals vide common judgment dated 20.03.2012 thereby, holding that marriage of plaintiff with Baldev Raj was not proved. No witness or relative of the plaintiff has been examined to prove that plaintiff and Baldev Raj were being treated as husband and wife at any point of time. In view of aforesaid, Appeal No.1 filed by Kamlesh Kumari was dismissed, whereas Appeal No.2 filed by Vijay Laxmi and others was accepted. Findings of trial Court on the issue of plaintiff being legally wedded wife of Baldev Raj were set aside. Issue No.1 was decided against the plaintiff. However, it was observed that the judgment shall have no effect on independent rights of defendants No.2 to 6 who were recorded to be children of Kamlesh Kumari from the lion of Baldev Raj because even illegitimate children have rights in the property as per Section 16 (3) of Hindu Marriage Act, that is how two appeals came to be

filed in this Court and the same are being decided by this Court by common judgment.

[11]. Appellant has formulated following substantial questions of law in grounds of appeal:-

“i) Whether the Will is not proved on record as per the provisions of the law?

ii) Whether the issue in regard to the relation of the appellant with deceased is substantially involved in the matter?

iii) Whether in the facts and circumstances of the case the judgment and decree of the learned courts below are sustainable in law, being result of misreading and misconstruing the evidence on record?

iv) Whether the judgment and decree passed by the courts below are legally sustainable in the eyes of law?”

[12]. Question No.1 is relatable to evidence on record. Issue No.2 could not be proved on record by cogent evidence inasmuch as that testimony of Anil Kumar PW-1 was found to be wayward, when he stated that Chanan Singh was not known to him and he met him only in the Court. The witness did not know the father's name of Baldev Raj and even Kamlesh Kumari from whom he acted as attesting witness on the Will in question. The witness did not give any explanation as to why he was called by Baldev Raj. He did not attend any marriage of Baldev Raj. He did not know the contents of Will. It was observed by the Courts

below that document was never read over to the witness and no reasons have been mentioned in the alleged Will for disinheriting the children of deceased-Baldev Raj. On the statement of this witness, Will was found to be surrounded by suspicious circumstances. The second testimony of Chanan Singh was also found to be suffered with mysterious circumstances. The testimony of this witness-Chanan Singh while appearing as PW-2 stood shattered in the cross examination, when he admitted that he did not know the address of Baldev Raj. He was not aware of the fact that whether Baldev Raj was suffering from any ailment, whereas plaintiff herself stated that he was suffering from Cancer and was hospitalized before his death where he remained admitted for 8-9 months. The witness also pleaded ignorance regarding identity of the plaintiff. He pleaded that only one lady was found present at the time of execution of Will. He further stated that Will was scribed on stamp paper whereas it was found to be on plain paper. He stated that stamp paper was purchased by Surinder Kumar deed writer. Deed writer has not been examined by the plaintiff. The denomination of the stamp paper was not known to the witness nor it was known to the witness whether Will was scribed in English or in Punjabi. The credibility of this witness shattered. Plaintiff herself appeared as PW-3 and deposed with the help of affidavit Ex.PW3/A. She specifically stated that the Will dated 19.11.2002 was executed by Baldev

Raj and he died on 07.12.2003. She admitted that Baldev Raj remained sick for 8-9 months prior to his death and suffering from Cancer of lungs and remained admitted in Tagore Hospital, Jalandhar and later on in Tyag Murti Hospital, Jalandhar before his death. Plaintiff also admitted that Vijay Laxmi (defendant No.1) used to remain in the hospital with Baldev Raj during his treatment and was looking after Baldev Raj. Even cremation of Baldev Raj was done at Kot Kishan Chand, Hoshiarpur Road, Jalandhar. She also admitted that she actively participated in execution of Will. Nothing could be brought on record as to how Baldev Raj was taken from the hospital for the purposes of execution and registration of Will, even photograph affixed on the front page of Will could not be matched with the photograph shown on the backside of the Will which was taken in the office of Sub Registrar. Plaintiff has admitted in categorical terms that Vijay Laxmi (defendant No.1) resided with Baldev Raj till his death. Since admission of plaintiff was in utter contrast to her pleading that Vijay Laxmi was ignoring Baldev Raj and that is why Baldev Raj executed Will in her favour. It has come on evidence that Baldev Raj was not residing with the plaintiff since long at village Dhannowal, rather, he was living with defendant No.1 at Jalandhar.

[13]. Lower Appellate Court reversed the findings under issue No.1 by appreciating the fact that the trial Court granted status to the plaintiff as being legally wedded wife of Baldev Raj only on

the basis of recital in the Will. Since Will itself has been found to be a suspicious document, therefore, no reliance could be placed on the said Will for the purposes of determining status of plaintiff as being legally wedded wife of Baldev Raj. Marriage between plaintiff and Baldev Raj could not be proved on record with reference to any cogent evidence. Attesting witnesses could not draw any light of such matrimonial relationship between plaintiff and Baldev Raj. The solitary statement of plaintiff regarding her relationship with Baldev Raj was held not sufficient to prove factum of marriage between plaintiff and Baldev Raj. Heavy onus was on the plaintiff to prove such relationship.

[14]. Admittedly, defendant No.1 was found to be resided with Baldev Raj and was serving Baldev Raj in the Hospital during his days of ailment. Baldev Raj remained admitted in the Hospital where defendant No.1 was living with him and was serving Baldev Raj. No evidence has come on record showing plaintiff to be living in the company of Baldev Raj at any point of time, rather she was not having Ration Card with Baldev Raj nor she was in possession of any electricity bill of the house of Baldev Raj. No relative has been examined to prove marriage between plaintiff and Baldev Raj. On the other hand, marriage certificate Ex.D-1 has been duly placed on record proving marriage of defendant No.1 with Baldev Raj which was registered in the office of Sub Registrar of Marriages at Jalandhar. Marriage was shown to have been performed on 10.07.1994. Even in Voter Card Ex.D-34,

defendant No.1 was shown to be wife of Baldev Raj. Defendant No.7 was shown to have taken birth from said wedlock in Birth Certificate Ex.P-2. On the basis of such over-whelming evidence, Lower Appellate Court decided that marriage between plaintiff and Baldev Raj was not proved. Since Will in question was not proved, therefore, specifically question No.1 does not arise at all. The relationship of plaintiff with that of Baldev Raj has not been found that of husband and wife, therefore, question No.2 also does not arise.

[15]. In view of findings recorded by the Courts below on the factum of Will having shrouded mysterious circumstances, questions No.3 and 4 also do not arise for consideration of this Court.

[16]. Learned counsel for the respondents has vehemently argued that since the execution of Will has not been proved with reference to cogent material on record, therefore, the findings recorded by the Lower Appellate Court are not required to be disturbed. Learned counsel for the respondents relied upon **Bharpur Singh and others Vs. Shamsheer Singh, 2009 (1) RCR (Civil) 826** in the context that participation of plaintiff in execution of Will besides shaken testimonies of attesting witnesses is a lawful consideration of ignoring the execution of alleged Will.

[17]. I have considered the entire controversy in the light of aforesaid facts on record. Status of plaintiff vis-à-vis Baldev Raj has not been proved to be that of legally wedded wife. The

findings recorded by Lower Appellate Court while accepting the Appeal No.2 i.e **RCA No.35 of 2010** cannot be faulted with any jurisdictional error or misreading of evidence in any manner, whereas, Appeal No.1 i.e. **RCA No.79 of 2011** has been rightly dismissed by the Lower Appellate Court. Since independent rights of defendants No.2 to 6 in Appeal No.1 are the subject matter of independent remedy and rights, therefore, this Court does not like to interfere in the view taken by the Lower Appellate Court in judgment and decree dated 20.03.2012.

[18]. Consequently, the judgment and decree dated 20.03.2012 passed by Additional District Judge, Jalandhar is hereby upheld. Both the appeals are found to be totally bereft of merits and are dismissed as such.

12.10.2015

prince

(RAJ MOHAN SINGH)
JUDGE