

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

**RSA No.5029 of 2011 (O&M)
Date of decision: 01.09.2015**

Prabhat Singh and another ... Appellants

Vs.

Kamla Devi and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

Present:- Mr. Amit Jain, Advocate
for the appellants.

Mr. Vikas Bahl, Senior Advocate with
Ms. Japneet Kaur, Advocate
for the respondents.

AMIT RAWAL J. (Oral)

Challenge in the present appeal is to the impugned judgments and decrees of the Courts below, whereby, the suit filed by the plaintiff-respondents for declaration that plaintiff and defendants No.3 to 6 are co-owners in joint possession to the extent of 5/6th share out of share of Gulab Devi in the land measuring 193 kanals 13 marlas and challenge to the sale deed dated 05.08.1997 in respect of the land measuring 18 kanals 14 marlas and mutation bearing Nos.3575 and 3583, has been decreed.

Mr. Amit Jain, learned counsel appearing on behalf of the appellant-defendants submits that Gulab Devi had three sons and three daughters. Plaintiff- Gian Singh, according to him, had shifted to Himachal Pradesh in the year 1962 after selling his share in the land. Gulab Devi executed a registered Will dated 29.12.1989 in favour of Kanta Devi wife of Prabhat Singh and on 05.08.1987 executed a registered sale deed in respect of land measuring 18 kanals 14 marlas in favour of Prabhat Singh. It is a matter of record that Prabhat Singh is a son of Gulab Devi. He further submits that it is not the case of the parties to the lis that property at the hands of Gulab Devi was/is ancestral. In fact, it is her self acquired property. Gulab Devi died in the year 2002 and Gian Singh filed the suit on 16.02.2002 claiming, aforementioned, relief. He further submits that both the attesting witnesses to the Will have been examined and the registered Will was not challenged during the life time of Gulab Devi and the same has been challenged only after her death, therefore, ingredients of fraud, undue influence and mis-representation, as required to be proved, as per Order 6 Rule 4 of the CPC, are lacking. He further submits that the respondent-plaintiff has to stand on his own legs and cannot rely upon the weak defence of the defendants, much less, evidence of the defendants. In essence, onus to prove the averments made in the plaint has to be discharged under Section 101 of the Indian Evidence Act. Thus, prays that following substantial questions of law arise for determination by this Court:-

“i) Whether in the facts and circumstances of the instant case, the appellants having proved the due execution of the Will as per law, the approach of the learned Courts below in decreeing the suit of the plaintiff-respondent can be sustained in law?

ii) Whether in the facts and circumstances of the instant case, plaintiff having failed to lead affirmative evidence to substantiate allegation of fraud and misrepresentation in execution of the sale deed in favour of the appellants, the plaintiff/respondent was entitled to the relief prayed for in the plaint?

iii) Whether in the facts and circumstances of the instant case, the judgment of the Courts below is not perverse being based on misreading, misinterpreting and misconstruing of the material documentary as well as oral evidence on record?”

Mr. Vikas Bahl, learned Senior counsel assisted by Ms. Japneet Kaur, Advocate submits that a fraud had been played upon the siblings, namely, Gian Singh and Balwant Singh. Change of line of succession as per Will is surrounded by suspicious circumstances, which has been executed in favour of the defendants and the Courts below rightly decreed the suit. He further submits that Kanta Devi had actively participated in execution of the Will, therefore, the Will is surrounded by suspicious circumstances, a

categoric averment made in the suit and therefore, deemed to be admitted as per Order 8 Rule 5 of the CPC. He further submits that there is no illegality and perversity in the findings rendered by the Courts below, much less, no substantial question of law arises for determination by this Court.

I have heard learned counsel for the parties and appraised the impugned judgments and decrees and record of the trial Court.

It is now well settled law that the testator can always alter the line of succession by bequeathing the property to third person but while doing so, there has to be specific reason. In the Will dated 29.12.1989, there is mention of other children and they have been looked after by giving certain valuable articles. Mere participation of the beneficiary would not render the Will to be surrounded by suspicious circumstances as at the time of execution of the Will, age of the testator was 75 years. Gulab Devi was the best person to challenge the Will and sale deed in case, she was aggrieved, but she did not challenge the same during her life time as she remain live for three years.

It is a convenient manner and mode to invoke cause of action in the year 2003 by alleging therein that on enquiry, it was found that mutation was effected in the year 2000 and thereafter, the suit had been filed with promptitude. Such assertion, in my view, is to cover the delay. Gian Singh-plaintiff has unequivocally admitted

that he had shifted to Himachal Pradesh after selling his share in the land in the year 1962.

It is also settled law that any registered document can be challenged within a reasonable period of time, i.e, 03 years. Gulab Devi did not challenge the same as noticed above.

In my view, both the Courts below have committed illegality and perversity, in setting aside the sale deed, as well as, mutation. I would be committing fallacy, in case, I do not refer the prayer made in the suit. On perusal of the suit, no declaration of the Will dated 29.12.1989 has been sought for.

It would be apt to refer the prayer clause of the suit, which reads thus:-

“It is, therefore, prayed that a decree for declaration that plaintiff and defendants No.3 to 6 are co-owner in joint possession to the extent of 5/6th share out of the share of Gulab Devi in the land measuring 193 kanals 13 marlas fully detailed in the head note of the plaint, situated at village Khadiala, H.B.No.60, Tehsil and District Hoshiarpur, as entered in jamabandi 1998-99 and the sale deed 5.8.97 in respect of 18 kanals 14 marlas area out of land detailed above, got executed by defendant No.1 in his favour from Smt. Gulab Devi deceased is illegal, null and void being sham and fictitious document, procured by defendant No.1 by playing fraud, undue

influence and by mis-representation consequently the mutation No.3575 regarding the sale in favour of defendant No.1 and mutation No.3583 regarding the inheritance of Gulab Devi deceased in favour of defendant No.2 are wrong illegal which are liable to be set aside with consequential relief of injunction restraining the defendants No.1 and 2 from alienating any part of the suit land more than their share may be passed in favour of plaintiff and against the defendants with costs.”

Both the Courts below have not appreciated the declaration of the Will being null and void had not been challenged. Accordingly, aforementioned substantial questions of law are answered in favour of the appellant-defendants and against the respondent-plaintiff.

Both the Courts below have not appreciated the oral and documentary evidence, much less, law.

Accordingly, impugned judgments and decrees are set aside and the appeal is allowed.

(AMIT RAWAL)
JUDGE

September 01, 2015
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