

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

R.S.A No. 2626 of 2012 (O&M)
Date of decision:- 07.04.2015

Ranjit Gupta and anr.

...Appellants

Versus

Parveen and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Vipin Mahajan, Advocate
for the appellants.

RITU BAHRI J.

This regular second appeal is against the judgment dated 07.03.2012 passed by learned Addl. District Judge Moga whereby the appeal filed by the plaintiff-appellants (herein after to be referred as 'appellants') and Nirmala Devi against the judgment and decree dated 17.08.2010 passed by learned Civil Judge (Jr. Divn.), Moga, was dismissed.

Respondents filed a suit against the appellants and Nirmala Devi for separate possession as owner to the extent of 1/3rd share by way of partition by metes and bounds, of the disputed property with consequential relief of permanent injunction restraining the appellants from selling, mortgaging or alienating in any way of specific portion and more than their share without getting the same partitioned.

The suit property was the joint ownership and joint possession of Sanjay Gupta and appellants in equal shares

on the basis of judgment and decree dated 04.09.1998. Respondent No. 1 is the widow of Sanjay Gupta who died on 18.05.2005 while respondent No. 2 is their minor daughter. Respondent No. 3 Nirmala Devi is the mother of Sanjay Gupta but no relief regarding mother is being claimed. Sanjay Gupta executed a registered will in favour of the respondents on 09.05.2005 and they are entitled to the estate of Sanjay Gupta in its entirety. Appellants and Nirmal Devi did not have good relations with the deceased during his life time. They severed all their relations with him. Due to joint-ness of suit property, respondents are unable to enjoy their share. Appellants are bent upon and are threatening to eject the respondents from the suit property forcibly and they also threatened to alienate specific portion.

Appellants and Nirmala Devi appeared and filed joint written statement taking a preliminary objection that suit is not maintainable because respondents had no relationship with deceased Sanjay Gupta. On merits, it is stated that suit property was exclusive ownership of Ranjit Gupta. Deceased Sanjay Gupta had relinquished his share in favour of Ranjit Gupta in a family settlement. Family settlement was admitted by Sanjay Gupta vide writing dated 09.02.2003, who also executed affidavit dated 16.05.2005 to that effect. The suit partition has already been partitioned in a family settlement. Respondent No. 1 is not a widow of

Sanjay Gupta and respondent No. 2 was not related to him. The documents relief upon by the respondents regarding their alleged relationship are forged and fabricated and cannot be relied upon for deciding the present controversy. It was admitted that Sanjay Gupta died on 18.05.2005 but it was denied that he executed any registered will in favour of the respondents. Sanjay Gupta was not in a position to execute the alleged will because he was ill and not in a sound disposing mind. Thus will was result of fraud and forgery committed by the respondents in connivance with witnesses and scribe.

From the pleading of the parties, the trial Court framed following issues:-

- “1. Whether the plaintiffs are entitled to separate possession as owner to the extent of 1/3rd share by way of partition of the suit property? OPP
2. Whether plaintiffs are entitled to permanent injunction, as prayed for? OPP
3. Whether suit of plaintiffs is not maintainable? OPD
4. Whether plaintiff is not entitled to discretionary relief of injunction?
5. Relief.”

Before the learned trial Court, appellants admitted that respondent No. 1 did not get divorce from her first husband i.e Rakesh Kumar through competent court of law and it was a divorce in a Panchayat. Thus, her marriage with

Sanjay Gupta was not legal. Learned counsel for defendants admitted that documents i.e compromise dated 16.05.2005 and affidavits of Sanjay Gupta are not proved and he does not press these documents. It was not disputed that Sanjay Gupta was owner of extent of 1/3rd share , vide judgment and decree dated 04.09.1993. He died on 18.05.2005. During his life time, he executed a registered will Ex P6 being endorsement Ex P6/A in favour of the respondents as appellants and Nirmala Devi did not have good relations with him. Nirmala Devi had disinherited him and a notice was also published in the newspaper. This fact has been admitted by the appellants and Nirmala Devi as well as by their witnesses. The will was duly proved on the file as required under the provisions of law. The will was witnessed by Amrajit Singh Lambardar and Gvoerdhan Dass and was scribed by Gulshan Kumar, Document Writer. The appellants have examined the scribe as P.W.6 and Goverdhan Dass as P.W.7, who deposed regarding execution of will by Sanjay Gupta. Respondent No. 1 has also deposed in support of their version.

The learned trial Court held that will is duly proved in terms of provisions of the Indian Succession Act and the Indian Evidence Act. The onus of proving the will is on the propounder. The trial Court relied upon the judgment of Hon'ble the Supreme Court in a case of Halathandayutham

and another v. Ezhilarasan 2010 (2) Apex Court Judgment 28.

As far as relationship of Sanjay Gupta with respondent No. 1, there was sufficient evidence that Sanjay Gupta used to live with Parveen Gupta as her husband and Barbi Gupta is their daughter, who born on 03.06.2000. P.W.1 Karanbir Grover, Clerk of MC, Moga has proved birth certificate Ex P1, in which name of mother of child is mentioned as Parveen and name of father as Sanjay Gupta. The entry of birth was made on 27.06.2000. P.W.2 Rajinder Partap Singh, Clerk Civil Hospital, Moga proved certificate Ex P2 issued by the Health Department, in which name of mother of child is mentioned as Parveen and name of father as Sanjay Gupta. P.W.3 Dharampla, Inspector Food and Supply Department has proved form D1 Ex P3. Joginder Pal, Clerk of OBC, Moga has proved copy of account opening form Ex P4 of account of respondent No. 1. P.W.8 Amit Sharma has proved record Ex P8 and P9 of LPG connection released in the name of Parveen Gupta.

Another reason which led the trial Court to come to a decision that will had been executed by Sanjay Gupta was that the will had been duly thumb marked by Sanjay Gupta. The contesting defendants have themselves produced a receipt/compromise deed dated 16.05.2005 and an affidavit of Sanjay Gupta, which bear thumb impression

of Sanjay Gupta. If Sanjay Gupta was in sound disposing state of mind on 16.05.2005, how can the appellants say that he was not in sound disposing state of mind on 09.05.2005. Thus, putting of thumb impression on the will is not surrounded by suspicious circumstances. Moreover, Nirmala Devi had disinherited him and a notice was also published in the newspaper. This fact has been admitted by the appellants and Nirmala Devi as well as by their witnesses. D.W.1 Sumesh Kumar has deposed that Sanjay Gupta used to live separate from his brother Ranjit Gupta and mother. He has also deposed that he was brought by Manjit Gupta to give evidence. The trial Court decreed the suit of the respondents in their favour for separate possession of their share to the extent of $\frac{1}{3}^{\text{rd}}$ share by way of partition by metes and bounds. The remaining $\frac{2}{3}^{\text{rd}}$ share of suit property is owned by appellants having $\frac{1}{3}^{\text{rd}}$ share of each. The appellants were restrained from selling, mortgaging or alienating more than their share in the suit property without getting the same partitioned.

On appeal, the lower Appellate Court upheld the findings given by the trial Court and in para 13 of the judgment, it is held that execution of the will has been duly proved, as per Section 63 of the Indian Succession Act as it was to be attested by two or more witnesses each of whom has seen testator sign or thumb mark or has seen some

other person sign the will, in the presence and by the directions of the testator. As per Section 68 of the Indian Evidence Act, if a document is required by law to be attested shall not be used as evidence until one attesting witness at least has been called for the purpose of proof. Further the appellants had not made any effort to get the disputed thumb impressions of Sanjay Gupta compared with his admitted/specimen thumb impressions. Further no evidence was led by the appellants to show that will was fabricated and forged.

The judgments passed by both the Courts below, calls for no interference. No substantial question of law arises for adjudication by this Court.

Accordingly, R.S.A is dismissed

April 07, 2015
G Arora

(RITU BAHRI)
JUDGE