

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

**RSA No.291 of 2012 (O&M)
Date of decision: 28.09.2015**

Ashok Kumar

... Appellant

Vs.

Kuldip Kumar and another

... 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. Harinder Kumar Aurora, Advocate
for the appellant.

Mr. Akshay Bhan, Senior Advocate with
Mr. G.S.Sandhu, Advocate
for the respondents.

AMIT RAWAL J.

Appellant-plaintiff filed a suit for separate possession by way of partition of three storied shop bearing Municipal No.BIII-1250/1, Bazar Sheikhan, Jalandhar, by metes and bounds and as well as for rendition of accounts of the partnership firm M/s Kumar Watch Company from the date of death of Mehar Chand till date on the premise that parties to the suit are none-else, but brothers, and Pushpa Wati was the owner of the property on the basis of the registered sale deed dated 28.01.1972. It was alleged that Pushpa Wati on 16.12.1986 died intestate and therefore, parties to the suit are co-sharers of the property in dispute. Defendants No.1 and 2

propounded to have forged and fabricated the Will dated 8.1.1986 in the previous litigation between the parties and culminated in favour of the plaintiff. On account of death of Mehar Chand, father of the parties, the plaintiff stepped into shoes of deceased Mehar Chand qua his share to the extent of $\frac{1}{3}^{\text{rd}}$.

The aforesaid suit was contested by both the parties by raising preliminary objections, vis-a-vis, locus standi, maintainability and barred by provisions of Order 2 Rule 2 CPC. It has been stated that Pushpa Wati executed a valid Will dated 08.01.1986, whereby, she bequeathed the property in question in favour of defendants No.1 and 2 and late Mehar Chand in equal shares. Mehar Chand got $\frac{1}{3}^{\text{rd}}$ share in the property, in question and during his life time, executed valid registered Will dated 24.04.1992 bequeathing his rights in the property, i.e., $\frac{1}{3}^{\text{rd}}$ share in favour of Kuldip Kumar and Naresh Kumar, defendants No.1 and 2, respectively. The cash capital of Mehar Chand in the firm M/s Kumar Watch Company was bequeathed, as per Will dated 24.04.1992 in three shares and the plaintiff also received his share of cash capital.

It was further stated that earlier civil suit for declaration was filed on the basis of the Will dated 24.04.1992 executed by Mehar Chad, whereby, plaintiff claimed $\frac{1}{2}$ share in house No.499-R, Model Town, Jalandhar and $\frac{1}{3}^{\text{rd}}$ share in the cash capital. The said suit was admittedly decreed on the basis of the Will executed by Mehar Chand.

Mr. H.K.Aurora, learned counsel appearing on behalf of the appellant-plaintiff submits that Will dated 08.01.1986, executed by Pushpa Wati has not been proved in accordance with law. Though the trial Court dismissed the suit on the ground that it was hit by the provisions of Order 2 Rule 2 CPC, but the lower Appellate Court returned the finding in favour of the plaintiff, vis-a-vis non-applicability of the aforesaid provisions, but by relying upon the provisions of Section 33 of the Indian Evidence Act, dismissed the appeal. In essence, Will of Pushpa Wati was proved into evidence in the earlier instituted suit, was tendered in the present suit, therefore, the mandatory requirement of law, i.e., provisions of Section 68 of the Indian Evidence Act and Section 63 of the Indian Succession Act, have not been complied with. Therefore, illegality and perversity have been committed, much less, following substantial questions of law, would arise to be determined by this Court:-

i) Whether the learned Appellate Court has not gravely erred in law while reversing the finding of the learned Civil Court on issue No.6A relation to the execution of Will dated 8.1.1986 which has not been proved in accordance with the provisions of Section 68 of the Indian Evidence Act?

ii) Whether both the Courts below have not gravely erred in law while deciding the issue relating to the rendition of the accounts against the appellant and in

favour of the respondents.?

Mr. Akshay Bhan, learned Senior counsel assisted by Mr.G.S.Sandhu, Advocate submits, that since Mehar Chand had executed a Will dated 24.04.1992 in respect of cash capital and as well as ½ share in the house, appellant-plaintiff cannot claim inheritance vis-a-vis shop by way of partition on the basis of natural succession as Will of Pushpa Wati has duly been proved. In essence, scribe of Will has appeared in the witness box and Ex.PX, is statement of one of the attesting witness, namely, Satpal son of Ganga Ram, has been proved on record. The provisions of Section 63(c) of the Indian Succession Act, have also been complied with, inasmuch as that the judicial record in respect of civil suit No.125/1998 titled as Ashok Kumar vs. Rajnish Chander & others, decided on 12.03.2003 was summoned. The defendants have examined Ram Lal, Scribe and Ramesh Chander, son of one of the attesting witnesses, had appeared and admitted that Will was scribed by Ram Lal, Advocate, new Court Jalandhar at the instance of Pushpa Wati and Ram Lal read the same in Punjabi. Pushpa Wati after admitting it to be correct signed the same in his presence and in the presence of father Sat Pal Singh, Ram Nath and other witness Ganga Ram. He further submits that no substantial question of law arises to be adjudicated by this Court.

In rebuttal, Mr. H.K.Aurora, Advocate relied upon the judgments of the Hon'ble Supreme Court in ***L.I.C of India and***

another vs. Ram Pal Singh Bisen 2010 (2) R.C.R.(Civil) 459; N. Kamalam (dead) vs. Ayyasamy 2001(4) R.C.R. (Civil) 193 and Janki Narayan Bhoir vs. Narayan Namdeo Kadam 2003(1) R.C.R. (Civil) 409 to contend that mere exhibition of the document would not dispense with its proof.

I have heard learned counsel for the parties and appraised the impugned judgments and decrees of the Courts below, as well as, trial Court record.

On going through the evidence brought on record, as well as, impugned judgments and decrees of the Courts below, I am of the view that the present appeal is liable to be dismissed for the reasons that Section 33 of the Indian Evidence Act provides that statements of the witnesses recorded in previously judicial proceedings can be read in evidence in subsequent suit. Admittedly, Sat Pal Singh had died. His statement had been proved on record as Ex.DX. He was the attesting witness of the Will dated 08.01.1986. Once the statement of the witness has been proved, the Courts below have not only taken into consideration the testimony of Ram Pal Singh Scribe i.e., Scribe, by arriving at a finding that the provisions of law, as noticed above, have been complied with. The ratio decidendi culled out in the aforementioned judgments cited supra, are not be applicable to the facts and circumstances of the present case as it is not the case where the Courts below, did not belie the statement of Ram Pal Singh, in fact, requirement of

Sections 68 and 63 of the Indian Evidence Act and Indian Succession Act, respectively, have been complied with. Even Ram Pal Singh son of Sat Pal Singh son of Ram Nath, who is none else, but son of another attesting witness, has identified signatures of his father.

Plaintiff has failed to lead direct and cogent evidence to disprove the authenticity and validity of the Will, much less that the same was allegedly surrounded by suspicious circumstances. Nothing suspicious has come out from the examination of the witnesses. One of the attesting witnesses of the Will had died and his statement had been proved, as per provisions of Section 33 of Indian Evidence Act. Another witness was not capable of giving statement. Mehar Chand had not mentioned about Will dated 08.01.1986 executed by Pushpa Wati, in his Will dated 24.04.1992, thus, bequeathing of property in favour of defendants, Kuldip Kumar and Naresh Chander, does not raise any suspicious circumstances, to discard the Will.

In my view, there is no illegality, much less, perversity in the finding rendered by the Courts below, thus, no substantial question of law arises to be determined by this Court.

Keeping in view the aforesaid reasons, there is no merit in the present appeal. Accordingly, the appeal is dismissed.

September 28, 2015
savita

(AMIT RAWAL)
JUDGE