

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.816 of 2012 (O&M)
Date of Decision.25.08.2015

Ved Parkash Dhawan and another

.....Appellants

Versus

Parbhat Kumar and others

.....Respondents

Present: None for the appellants.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ? No
2. To be referred to the Reporters or not ? No
3. Whether the judgment should be reported in the Digest? NO

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K. KANNAN J. (ORAL)

1. There has been no representation for the appellants from the time when the appeal was presented in the Court. I have, therefore, proceeded to examine the case to see whether there is any substantial question of law involved for consideration.

2. Delay of 224 days in refiling the appeal is condoned.

3. The defendants No.1 and 3 are the appellants. The suit had been filed with reference to the estate of Sohan Lal Dhawan by one of his sons Prabhat Kumar. Sohan Lal Dhawan had four sons and two daughters and they were defendants No.4 and 5. 6th defendant was the wife of 3rd defendant. The plaintiff's suit had been filed for separate possession by way of partition in respect of house properties bequeathed under a Will by his father on 28.05.1993 and for 1/6th share of all the stocks and units in Unit Trust of India and other holdings in banks. There was also a claim to an equitable allotment of DDA flat at Delhi. The suit

was resisted by the 1st defendant who set up a rival Will alleged to have been executed by the father 8 days later on 6.6.1993. The father had died on 26.6.1993. The trial Court upheld the first Will propounded by the plaintiff and granted decree with reference to the house property but made some modification in the manner of allotment of his share. It declined to grant any relief with reference to the units to the property allotted by DDA, Delhi and plaintiff had, therefore, preferred an appeal against the decree and seeking for a modification to be made to provide for the relief as he had sought for in full. The defendant though did not prefer an appeal, wanted to rely upon the Will which had been found against him and pressed for an adjudication regarding the genuineness of the Will which he had propounded. The Appellate Court considered the evidence and found that the Will made in favour of the plaintiff is genuine one and by that Will he had revoked still earlier Will made on 4.12.1990 and had set out reasons as to why he was excluding the daughters and the 1st defendant. He had grave misgivings with the 1st defendant and he had made reference to the fact that he was having a business under the name Sohan Lal Dhawan and sons but that business had been wrested control by the 1st defendant and he had taken signatures in several papers and excluded the other members of the family from participating in the business. The father had noted in the Will that there had been misunderstandings amongst the members of the family on account of his conduct and that he was making a bequest in favour of other sons. The Court found when the first Will executed in the year 1990 had been modified after the marriage of the daughters and when the father had given appropriate reasons for its modification and

duly registered the same, there was simply no reason why the father must have still modified it 8 days later and if he had registered the Will, there was no reason why he could not have thought of registering the Will which was being set up by the defendant. The Court also held that the father had definitely grievance about the conduct of the 1st defendant and it was inconceivable that he would have had made bequest in favour of the 1st defendant. Even the Will propounded by the defendant showed the existence of the Will propounded by the plaintiff and when the Court found that the Will was most artificial and there being no justification given as to why he was making any modification of Will which was a natural disposition giving the circumstances existing in the family, the Court confirmed the finding of the trial Court and upheld the Will propounded by the plaintiff. However, it made modification with reference to distribution of share to conform to the recitals in the Will propounded by the plaintiff.

4. Taking up the issue of whether the plaintiff was entitled to the 1/6th share which had not been disposed of under the Will with reference to some bank deposits and units, the Court found that a suit for partition of movable property was not possible. I will find the reasoning of the trial Court to be erroneous, for, it was perfectly competent to seek for partition of even movable assets and there is no law that partition can be only with reference to immovable property. However, the plaintiff himself is not in appeal before this Court to press for a right with reference to movable property and therefore, I merely record my own disapproval to the manner of disposal of the claim by the plaintiff but the plaintiff's own right could be addressed appropriately

when he feels aggrieved and comes up in appeal before this Court. As far as the defendants are concerned, all that they could state was that the Will propounded by them was true. The trial Court as well as the lower Appellate Court have found substantial reasons why the Will could not be true and the defendants were actually setting up a forged Will by using up some of the signatures which were available to them. There was also expert evidence brought by the plaintiff to say that the Will could not be true and it contained features which militated against the genuineness of the signatures of even the father. I find the decree granted in favour of the plaintiff to the extent to which he has been granted the share in terms of the Will propounded by him namely the Will dated 28.5.1993 accords with evidence and there is no scope for interference in second appeal.

5. The second appeal is dismissed as arising no substantial question of law for consideration.

(K. KANNAN)
JUDGE

August 25, 2015
Pankaj*