

In the High Court of Punjab and Haryana at Chandigarh

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R.S.A. No.2363 of 2013 (O&M)

.....

Date of decision:4.3.2015

Harsh Kumar Sharma

.....Appellant

v.

Savita Devi Sahajpal and others

.....Respondents

....

Coram : Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Ashok Sharma Nabhewala, Advocate for the appellant.

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Inderjit Singh, J.

Harsh Kumar Sharma appellant-defendant No.1 has filed this regular second appeal against Savita Devi Sahajpal respondent No.1-plaintiff and Vijay Sharma respondent No.2 through his LRs respondents No.2A and 2B-defendants challenging the judgment and decree dated 25.11.2010 passed by learned Additional Civil Judge (Senior Division), Chandigarh, vide which the suit filed by Savita Devi Sahajpal has been decreed holding the plaintiff as owner in possession of House No.4, Sector 2-A, Chandigarh on the basis of Will dated 1.6.1966 and defendants No.1 and 2 were restrained from interfering into the possession of the plaintiff over the said house.

The appeal filed by Harsh Kumar Sharma was also dismissed

by the learned Additional District Judge, Chandigarh, vide judgment and decree dated 29.1.2013. Aggrieved from the judgments and decrees, the present regular second appeal has been filed.

I have heard learned counsel for the appellant-defendant No.1 and have gone through the record.

From the record, I find that Savita Devi Sahajpal-plaintiff (respondent No.1 herein) filed the suit against Harsh Kumar Sharma etc. defendants for declaration to the effect that plaintiff is owner of House No.4, Sector 2-A, Chandigarh and defendants No.3 and 4 are tenants under the plaintiff and further restraining the defendants No.1 and 2 from interfering into the peaceful possession of the plaintiff in respect of said house. The case of the plaintiff is that Shri Guru Dutt Sharma father of plaintiff and defendants No.1 and 2 was owner of House No.4, Sector 2-A, Chandigarh built on an area of 4 Kanals and was keeping his residence in the said house. He expired at Ludhiana on 26.1.1967 leaving behind the plaintiff his only daughter and defendants No.1 and 2 as sons and Smt. Vidya Devi his wife. Guru Dutt Sharma had executed a Will on 1.6.1966 before the Sub Registrar, Chandigarh, which was registered on 13.6.1966. Under the said Will Guru Dutt Sharma had given and bequeathed the said house to plaintiff alone in exclusion of all his legal heirs. Smt. Vidya Devi Sharma died at Chandigarh on 8.5.1992, while living in the said house. The plaintiff was living in East Africa in the year 1966 i.e. at the time of execution of the Will and at all times thereafter and is permanent resident of Nairobi, Kenya, East Africa. It appears that late Guru Dutt Sharma, after

execution of the Will had kept the same in a steel almirah lying in the said house and kept the contents of the Will secret from the plaintiff, his two sons and his wife and execution of the Will was not known to any of these legal heirs. Accordingly, the mutation in the records of the Estate Office, Chandigarh was effected in favour of the legal heirs. Defendants No.1 and 2 are settled in England ever since 1970 and at least for the last 26 years and both of them had not visited Chandigarh. They may have visited Chandigarh very rarely at the most on two or three occasions, therefore, they and even Smt. Vidya Devi had no opportunity to know about the contents of the Will. After the death of Smt. Vidya Devi on 8.5.1992, husband of the plaintiff, namely, Jai Kishan Sahajpal visited Chandigarh in January 1997 and on that occasion opened the steel almirah with a view to locate the papers of his own house bearing No.879, Sector 8, Panchkula, which is in the name of plaintiff and, at that time, found the Will dated 1.6.1966 and read the contents of the same. After reading the Will, the plaintiff's husband met Shri Ranjit Singh Walia, Advocate to confirm the execution of the Will as he was one of the attesting witness of the Will. He further disclosed that other witness was Shri Adarsh Sen Anand, who was a practicing Advocate in the year 1966 at Chandigarh and at that time Hon'ble Judge of Hon'ble Supreme Court of India. Husband of the plaintiff returned to Nairobi along with original Will and showed it to the plaintiff, who again telephoned to Shri Ranjit Singh Walia, Advocate to confirm the execution of the Will, which was accordingly confirmed by the said Advocate. After that, the plaintiff requested defendants No.1 and 2 to admit the plaintiff to be the

sole and exclusive owner of the said house and intimated defendants No.3 and 4 about the sole ownership of the plaintiff. Defendant No.3 was a tenant on first floor of said house and defendant No.4 was a tenant in one room on the ground floor of said house and defendants No.3 and 4 refused to admit the plaintiff to be sole and exclusive owner of the house.

The case of defendant No.1 (appellant herein) in the written statement was that the suit is not maintainable being simpliciter suit for declaration without seeking relief for possession. The suit was time barred because the alleged Will was executed on 1.6.1966 and Shri Guru Dutt Sharma died on 26.1.1967 and the suit had been filed in the year 1998. It is also stated that Smt. Vidya Devi mother of the answering defendant was in fact the real owner of the house because she was a secondary school teacher in Kenya and testator used her income in building the house. The house was built entirely from the earning of Smt. Vidya Devi and the executant had no authority to bequeath the property in favour of the plaintiff as he was not owner of the house. It is also stated that Will dated 1.6.1966 is forged and the Will had not seen the light of the day for a period of almost 31 years. It is also stated that at the time of death of Smt. Vidya Devi, mother of the plaintiff and answering defendant, the plaintiff and her husband Shri Jai Kishan Sahajpal and all the legal heirs were present. At that time, the steel almirah was opened, but no such Will was found from the almirah. The Will is forged. Both the parties produced the evidence.

The learned Additional Civil Judge (Senior Division), Chandigarh, vide judgment and decree dated 25.11.2010 decreed the suit of

the plaintiff. The appeal filed by Harsh Kumar Sharma was also dismissed by the learned Additional District Judge, Chandigarh, vide judgment and decree dated 29.1.2013.

At the time of arguments, learned counsel for the appellant has not pointed out any suspicious circumstances surrounding the execution of the Will. He argued that substantial question of law arises as to whether simpliciter suit for declaration is maintainable and secondly, the delay in producing the Will for the first time itself suspicious? He argued that the suit is also time barred.

From the record, I find that the Will has been duly proved by Savita Devi Sahajpal-plaintiff as PW-1, Jai Kishan Sahajpal husband of the plaintiff as PW-2, Shri R.S. Walia, Advocate, who was one of the attesting witness of the Will as PW-3.

On the other hand, the defendants have not led any evidence and the evidence of the defendants was closed by Court order.

A perusal of the judgment of the Courts below shows that the evidence of the plaintiff remained un-rebutted on the file. The plaintiff has produced the evidence to show that the Will was not in her knowledge and it has only come in the year 1997 when the plaintiff's husband Jai Kishan Sahajpal opened the steel almirah and found the Will. From the record, it looks that the Will was not in the knowledge of anybody except the attesting witnesses etc. There is no evidence on record to show that the plaintiff was knowing regarding the execution of the Will earlier to the year 1997. The plaintiff was residing in the foreign country i.e. Kenya even at the time of

execution of the Will. Defendants No.1 and 2 also stated to have been shifted to U.K. in 1970. No cogent evidence is on record to show that the plaintiff was knowing the execution of the Will before the year 1997. Therefore, when the Will had been located in the year 1997 and the suit was filed in the year 1998, the same is within limitation and, in no way, it can be held that the suit is time barred.

As regards that simpliciter suit for declaration is not maintainable, I find that this argument has also no force. The suit has been filed for declaration as owner on the basis of the Will by the plaintiff and also for permanent injunction restraining defendants No.1 and 2 from interfering in the peaceful possession of the plaintiff. As defendants No.1 and 2 are not in possession over the suit property and only the tenants are in possession since the life time of Smt. Vidya Devi, therefore, in no way, it can be held as the suit for mere declaration. It is in the evidence as deposed by Shri Ranjit Singh Walia, Advocate that the Will was properly executed by Shri Guru Dutt Sharma (since deceased), who had expressed his desire to make and execute the Will. He was taken to the residence of Dr. Adarsh Sen Anand in Sector 19, Chandigarh, who was a practicing lawyer at that time and later retired as Hon'ble Chief Justice of the Hon'ble Supreme Court of India. The Will was drafted by Dr. Adarsh Sen Anand at the instance of late Shri Guru Dutt Sharma. A perusal of the judgments of the Courts below shows that the findings are correct and as per law. No substantial question of law arises in this regular second appeal.

The learned counsel for the appellant argued that notice of

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motion be issued for making an attempt for settling the matter in dispute. On this argument, I again find no merit. It is a regular second appeal and the findings of the Courts below are concurrent, which are correct and as per law. No question of law, much less any substantial question of law arises in the present regular second appeal and the findings recorded by the Court below are correct and as per law, therefore, there is no necessity to issue notice of motion to the respondents on the ground of asking for compromise.

Therefore, keeping in view the facts and circumstances of the present case, the judgments and decrees passed by the Courts below are upheld.

Finding no merit in the regular second appeal, the same is dismissed.

March 4, 2015.

(Inderjit Singh)
Judge

hsp