

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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RSA No. 3890 of 2013 (O&M)

Date of decision : March 17, 2015

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Satbir

.....Appellant

Versus

Aggarsain

.....Respondent

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. S.K Jain, Advocate for the appellant.

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1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

RITU BAHRI, J

This regular second appeal has been filed against the judgment dated 22.3.2013 passed by the Additional District Judge, Sirsa, whereby the appeal against the judgment dated 9.6.2012 passed by Civil Judge (Junior Division) Sirsa was dismissed. Vide the trial Court judgment suit of the plaintiff for declaration and permanent injunction was dismissed.

Facts expressed in the plaint, in brief are that Raj Karan had four sons namely Satbir (plaintiff), Hari Singh @ Bir Singh, Suresh Kumar and Devi Lal. Raj Karan owned and possessed land measuring 53 kanals 0 marlas in Vilalge Rajpur and land measuring 14 kanals 0 marlas in Village Chadiwal both situated in District Sirsa.

In a family settlement-cum-partition which took place on 15.10.2001 between the plaintiff Satbir and the deceased, the land in the village Chadiwal fell into the share of the plaintiff and the land at Village Raipur fell into the joint share of the deceased, Hari Singh and Devi Lal. The plaintiff pursuant to the above said settlement relinquished his land measuring 251 kanals 12 marlas at Raipur in favour of his father and brothers while the latter persons relinquished their land measuring 249 kanals 2 marlas at Village Chadiwal in favour of the plaintiff both deeds being registered on 5.10.2001. On that very date, the deceased executed and got registered two Wills one in favour of the plaintiff with respect to the land at Village Chadiwal (registered at Sr. No. 63) and the second (registered at Sr. No. 64) in favour of Hari Singh and Devi Lal with respect to land at Village Raipur. Raj Karan died on 6.12.2007. After the death of Raj Karan, the beneficiaries Hari Singh, Devi Lal and Suresh got entered and sanctioned mutation no. 440 dated 25.2.2008 with respect to land measuring 53 kanals 0 marlas at Village Raipur received by way of Will No.64 dated 5.10.2001. It is moreover provided that the deceased had never cancelled in his life time the Will No.63 through the alleged cancellation deed No.39 dated 5.7.2002 and had never executed the second Will No.40 dated 5.7.2002 in favour of the defendant. It is claimed by the plaintiff that the alleged cancellation deed and the Will No.40 dated 5.7.2002 in favour of the defendant are illegal, null, void and was obtained by playing fraud, misrepresentation, undue influence and coercion etc.

On notice, the defendant filed a written statement and took a preliminary objection that the plaintiff had no cause of action and locus standi and on merits, the defendant admitted that the deceased was owner in possession of the land at Village Raipur and Chadiwal. The documents of mutual release deeds were not executed in accordance with the family settlement as there was doubt about the total land in both the villages. The defendant has admitted the execution of the Will by the deceased in favour of Hari Singh, Suresh and Devi Lal. Will No.63 executed by the deceased in favour of the plaintiff was a result of fraud and coercion by the plaintiff played over the deceased. It was averred that one, Brij Lal and the plaintiff had suffered a decree for land measuring 12 killas in favour of his son Suresh without intimating other co-sharers and heirs of Brij Lal which was an outcome of coercion etc. on Brij Lal. The aforesaid land had to be distributed in equal shares and during this dispute the will in favour of the plaintiff came in light. The deceased voluntarily got cancelled the Will No.63 vide cancellation deed No. 39 and in order to compensate Hari Singh father of the defendant, the deceased got executed and registered a Will on 5.7.2002 in favour of the defendant voluntarily. It was further mentioned by the defendant, the deceased was mentally and physically fit to execute a Will and he had taken due care of and served well the deceased in the last days. The trial Court on 26.8.2008 framed the following issues:

(i) Whether the plaintiff has become owner in

possession of the suit land as detailed in the head note of the plaint on the basis of a registered Will dated 5.10.2001 executed by Raj Karan son of Beg Raj, as prayed for? OPP.

(ii) Whether the alleged cancellation will dated 5.7.2002 and alleged registered will dated 5.7.2002 alleged to be executed by Raj Karan in favour of the defendant qua suit land and subsequent revenue records on the basis of the Will dated 5.7.2002 are illegal, null and void, fake and bogus obtained by way of misrepresentation and are not binding upon the rights of the plaintiff? OPP

(iii) Whether the plaintiff is entitled to the relief of permanent injunction restraining the defendant from alienating the suit land in any manner? OPP

(iv) Whether the plaintiff has got no cause of action and locus-standi to file the present suit? OPD.

(v) Whether the plaintiff is estopped from filing the present suit by his own act and conduct? OPD.

(vi) Whether Hari Singh father of the defendant has executed a legal and valid Will dated 5.7.2002 in favour of the defendant? OPD.

Issues no. 1 & 2 were decided against the plaintiff and in favour of the defendant. It was observed that Ram Swaroop PW-2, one of the attesting witness deposed to the execution of the Will in favour of the plaintiff, on which he had put his signatures along with the other witness Gopi Ram. He further admitted that said Will in favour of the plaintiff was subsequently got cancelled by the deceased. PW-3 Sri Ram Registration Clerk deposed to the correctness of the Will No. 63 dated 5.10.2001, On the other hand from the defendant side DW-1 Mahesh Pareek, Advocate deposed only to the documents drafted by him. DW-2 Aggarsain deposed in line with the contentions raised in the written statement and also that the said Will NO.40 dated 5.7.2002 is absolutely legal and voluntary. DW-3 vide his affidavit Ex. DW3/A deposed that the deceased had executed a cancellation deed No. 39 dated 5.7.2002 and a Will No. 40 dated 5.7.2002. Then deposed that the said deed were executed out of the free will of the deceased. In his cross-examination also, he deposed as to the cancellation of the Will in the name of the plaintiff by the deceased.

The trial Court held that the cancellation deed No. 39 and the Will No. 40 dated 5.7.2002 had been duly proved by the defendants by way of the evidence of the witnesses and mutation. No evidence was led by the plaintiff to show that the above said two

documents were result of undue influence or fraud. The suit of the plaintiff was dismissed.

On appeal against this order, the lower Appellate Court affirmed the findings recorded by the trial Court that the execution of cancellation deed Ex. P-7 and Will Ex. P-8 had been duly proved by examining DW-1 Mahesh Pareek, Advocate, scribe and DW-3 Ran Singh Lamberdar, attesting witness of Will Ex. P-8 by late Raj Karan. While examining the contents of the Will Ex. P-8, Raj Karan had stated that the Will No. 63 dated 5.10.2001 in favour of the plaintiff was being cancelled because the plaintiff was not serving late Raj Karan and it was the defendant who was looking after the testator. Since the execution of the Will had been duly proved, the intention of the testator Raj Karan was to disinherit the plaintiff from the suit land. The plaintiff in his cross-examination admitted that the Will Ex. P-8 had been executed by Raj Karan in favour of the defendant because the plaintiff had concealed the fact that late Brij Lal had suffered a decree in favour of his son Suresh. From the above said facts, the lower Appellate Court came to a conclusion that the execution of the Will Ex. P-8 had been duly proved by the defendants. Brij Lal was handicapped and issueless. Except the land given by him to Suresh by virtue of the decree i.e 92 kanals few marlas, the remaining share of Brij Lal went by succession to his brothers. DW-3, Ran Singh Lambardar has also stated in his cross-examination that Brij Lal used to live with Satbir in Village Chaddiwal. He was handicapped and Satbir and Brij Lal used to jointly cultivate the land. The decree

suffered by Brij Lal in favour of son of the plaintiff does not find mention in the release deed dated 5.10.2001 which suggests that the decree suffered by Brij Lal was not in the knowledge of the other members of the family at the time of execution of the release deed. When Raj Karan became aware of the above said decree, he cancelled Will Ex. P-11 in favour of the plaintiff and executed Will Ex. P-8 in favour of the defendant to make the shares equal. The possibility of any fraud being exercised upon him by the plaintiff for executing Will Ex. P-11 in his favour or by the defendant in executing Will Ex. P-8 in favour of the defendant was not there because he was neither residing with the plaintiff nor with the defendant.

Finally both the cancellation deed Ex. P-7 and Will Ex. P-8 were registered documents and the and the presumption of truth is attached to the endorsement of the Sub Registrar that the Will was signed/thumb marked and thereafter it was read over to the executant. In this regard, reliance has been placed upon judgment cited ***Raj Kumar and another vs. Kailon Devi, 2009(4) Civil Court Caes, 361 (P&H)*** wherein this Court has held that an endorsement of Sub Registrar has a presumption of truth attached to it. Similar view has been expressed by Hon'ble Karnataka High Court in the case of ***Ramganyakamma and another vs. K.S Prakash (deceased) by Lrs & others 2006(3) Civil Court Cases, 80.***

The allegations of the plaintiff regarding Will Ex. P-8 being result of fraud and undue influence were held to be vague and not substantiated by any evidence on record and the appeal was

dismissed being devoid of any merit.

By perusing the judgments passed by both the Courts it is made out that the cancellation deeds P-11 and Will Ex. P-8 are duly registered documents and have been proved by the defendant while leading evidence of DW-1 and DW-2. It has been proved by the testimonies of the plaintiff as well as the defendant that Brij Lal cancelled Will Ex. P-11 in favour of the plaintiff and executed Will Ex. P-8 in favour of the defendant to make the shares equal. The execution of above two documents have been duly proved and the plaintiff has miserably failed to lead any evidence to show that there was coercion or undue influence on the deceased Raj Karan. It has further come into the evidence that the deceased was neither staying with the plaintiff nor with the defendant.

The findings of facts recorded by both the Courts do not require interference in this regular second appeal as no substantial question of law arises for consideration in this appeal. Hence the same is dismissed.

March 17, 2015
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(**RITU BAHRI**)
JUDGE