

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

RSA No.882 of 2013 (O & M)

Date of Decision:19.02.2015

Sushila Devi and others

....appellants

Versus

Usha Devi and others

.....respondents

CORAM: HON'BLE MR.JUSTICE ARUN PALLI

- 1.Whether Reporters of local papers may be allowed to see the judgement?**
- 2. To be referred to the Reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

Present: Mr.Sandeep Bansal, Advocate
for the appellants

ARUN PALLI, J.(ORAL):-

Suit filed by the plaintiffs was dismissed by the trial Court vide judgement and decree dated 05.01.2011. Appeal preferred against the said decree failed and was dismissed on 16.11.2012. This is how, plaintiffs are before this Court, in this Regular Second Appeal. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

In short, in a suit filed by the plaintiffs, they prayed for a declaration that they were owners in possession of 1/6th share out of a land measuring 106K-0M, comprised in khasra numbers as depicted in the cause title of plaint. And also 1/6th share in plot

No.58, measuring 500 sq.yards, bearing khasra No.759, situated in village Bhirdana, Tehsil and District Fatehabad and $\frac{1}{2}$ share in all other moveable and immovable properties that were owned by Smt.Karam Devi on the basis of inheritance. Further, mutation of inheritance of Karam Devi widow of Dhani Ram, bearing No.6287 in favour of defendants No.2 to 4, regarding her $\frac{1}{3}^{\text{rd}}$ share in a land measuring 106K-0M was wholly illegal, null and void. It was averred that the Will bearing registration No.22 dated 02.02.1998 and the Will bearing registration No.91, dated 06.05.1994, registered at the office of Sub-Registrar, Sadar, Bilaspur, Himachal Pradesh, were illegal, not executed by Karam Devi in a free and sound disposing mind. In fact, both the Wills were got executed by the defendants from her by misrepresentation and playing fraud upon her. A decree for injunction was also claimed restraining the defendants from alienating the suit property in any manner and also from taking forcible possession of the properties from the plaintiffs. It was averred that originally, Dhani Ram was the owner in possession of the suit property and, post his death, his estate was inherited by his two sons i.e.Kashmir Singh and Kartar Singh and his widow Karam Devi. As Kashmir Singh died in the year 1998, his $\frac{1}{3}^{\text{rd}}$ share was inherited by the defendants in equal shares. Likewise, subsequent to the death of Kartar Singh, in the year 2000, his $\frac{1}{3}^{\text{rd}}$ share was inherited by the plaintiffs in equal shares. Karam Devi was said to have been residing with the parties to the suit in village Bhidhana. Defendants in collusion with Pyare Lal son of Jamuna Dass and Amar Nath son of Narayan Dass, residents of Bilaspur, succeeded in

procuring a Will from Karam Devi by playing fraud upon her. However, in the year 1998, Karam Devi through Amar Chand son of Narayan Dass came to know of the said Will. A panchayat was convened and Karam Devi decided to revoke the said Will. As the said Will was registered at Sadar Bilaspur, H.P., she visited Bilaspur in the year 1998, and after she returned, she informed that she had revoked the Will dated 06.05.1994. As Karam Devi died on 09.03.2008, the plaintiffs became owners in possession of $\frac{1}{2}$ share in all the properties left by her. Correspondingly, defendants also acquired title in the estate of Karam Devi to the extent of $\frac{1}{2}$ share. However, when plaintiffs contacted the halqa patwari for getting the mutation of inheritance entered in their names, it transpired that defendants No.2 to 4 had already got mutation No.6287, sanctioned, regarding the entire share of late Karam Devi, on the basis of the Will dated 02.02.1998. That being so, the plaintiffs had assailed the Will dated 02.02.1998.

In defence, it was pleaded, inter alia, that the estate of Dhani Ram son of Tulsi Ram, was succeeded to by his two sons and a widow i.e. Kartar Singh, predecessor-in-interest of the plaintiffs, Kashmir Singh, predecessor-in-interest of the defendants and Karam Devi his widow. Kartar Singh had separated himself from Dhani Ram during his life time and deceased Karam Devi was living with the wife of Kashmir Singh, who used to look after her. Karam Devi had executed a Will dated 06.05.1994, vide which she had bequeathed her entire property in the name of plaintiff No.2 and defendants No.2 to 4 in equal shares. Kartar Singh i.e.father of plaintiff No.2 was not

happy since only 1/4th share out of the estate of Karam Devi was being bequeathed in the name of plaintiff No.2 and rest 3/4th, was transferred in the names of defendants No.2 to 4, he along with his wife Sushila Devi quarrelled with deceased Karam Devi. In fact, Kartar Singh wanted Karam Devi to bequeath half of her estate to his son. That being so, deceased Karam Devi being completely displeased with Kartar Singh and his wife Sushila Devi, executed another Will bearing registration No.22 dated 02.02.1998, bequeathing her entire share in favour of defendants No.2 to 4. Accordingly, post death of Karam Devi, mutation of her inheritance was sanctioned in their favour.

On a consideration of the matter in issue and the evidence on record, the Courts below found that Will dated 06.05.1994 (Mark 'PA'), revealed that Kartar Singh i.e. predecessor-in-interest of the plaintiffs had separated himself during the life time of his father namely Dhani Ram. Since Kartar Singh was not providing any assistance to the testator, she was living with the defendants. Despite that, Karam Devi bequeathed 1/4th share out of her properties in favour of plaintiff No.2. Accordingly, it was concluded that a conjoint reading of the testimony of Sushila Devi-PW1 and the recitals of the Will (Mark 'PA'), proved that the plaintiffs had come to know that Karam Devi had bequeathed only 1/4th share in favour of plaintiff No.2. Thus, they quarrelled with the testator and as a result, she revoked the Will dated 06.05.1994 and executed another Will dated 02.02.1998 (Ex.D1) in favour of defendants No.2 to 4. Evidence on record, proved that at the time of execution of the

Will (Ex.D1), the testator was alone and was not accompanied by any of her family members. The plaintiffs had failed to lead any evidence on record to show that the deceased was not in a free and sound disposing mind at the time of execution of the said Will. Defendants, to prove valid execution of the Will dated 02.02.1998 (Ex.D1) examined Virender Singh-DW1, who identified the signatures of the testator. One of the marginal witnesses of the Will i.e. Pyare Lal -DW2, also testified the due and valid execution of the Will in question. Likewise, Amar Nath-DW3, i.e.scribe of the Will, proved the due and valid execution of the Will dated 02.02.1998. Evidence brought on record showed that the other witnesses of the Will had since passed away. Accordingly, it was concluded that the Will in question was duly proved by defendants No.2 to 4 in terms of the requirement of Indian Evidence Act, 1872. Nothing was brought on record to prove that the Will (Ex.D1) was obtained by way of fraud played upon deceased Karam Devi. Though, there were certain infirmities in the testimonies of Virender Singh-DW1, Pyare Lal-DW2 and scribe Amar Nath-DW3, but that was natural, as more than 10 years had passed by. The factors that were pointed out by the plaintiffs to suggest that the Will in question was surrounded by suspicious circumstances, were not such as would raise any suspicion qua the execution of the Will by Smt.Karam Devi. Resultantly, the suit and thereafter, even the appeal preferred by the plaintiffs was dismissed.

I have heard learned counsel for the appellant and perused the RSA paper book.

Learned counsel for the appellant simply seeks to reiterate the submissions that were advanced before the Courts below and rejected after a due and comprehensive consideration. No other argument was advanced.

On a due and thoughtful consideration of the matter in issue, I am of the considered view that the instant appeal is devoid of merit and is, thus, liable to be dismissed for the reasons that are being recorded hereinafter.

Concededly, Karam Devi had inherited 1/3rd share from the estate of her late husband Dhani Ram. Execution of the first Will dated 06.05.1994 (Mark 'PA'), by Karam Devi was not disputed even by the plaintiffs. Needless to assert, for plaintiffs to succeed, they were required to prove that the Will dated 02.02.1998 was indeed obtained by the defendants by way of fraud played upon deceased Karam Devi or the same was not a validly executed document. Ex facie, defendants examined one of the marginal witnesses of the Will dated 02.02.1998 (Ex.D1), who proved the due and valid execution of the Will. Likewise, even the scribe of the Will dated 02.02.1998 i.e.DW3 Amar Nath, testified the due and valid execution thereof. Virender Singh-DW1, duly identified the signatures of the testator upon the Will (Ex.D1). The Will in question was duly registered with the Sub-Registrar Sadar Bilaspur, H.P. on 02.02.1998, itself. On a consideration of the material on record, both the Courts had concurrently concluded that the Will dated 02.02.1998 was executed in terms of the provisions of Indian Evidence Act, 1872. The recitals in the Will dated 02.02.1998, proved that predecessor-in-interest of

the plaintiffs i.e. Kartar Singh had separated himself during the life time of his father i.e. Dhani Ram, and was not providing any assistance to the testator. The evidence on record showed that the testator was living with the defendants, who in turn, were providing her with all the necessities of life. As observed by the Courts below, despite this, Karam Devi still bequeathed 1/4th share out of her estate in favour of plaintiff No.2 i.e. son of Kartar Singh, vide Will dated 06.05.1994. However, Kartar Singh and his wife Sushila Devi were still displeased as only 1/4th share was being bequeathed in favour of their son i.e. plaintiff No.2 and the rest 3/4th share was being transferred in favour of defendants No.2 to 4 i.e. sons of Kashmir Singh. Resultantly, they quarrelled with the testator and persisted that she must transfer half share in favour of plaintiff No.2. As a result, she revoked the earlier Will dated 06.05.1994, and executed a Will dated 02.02.1998 (Ex.D1), vide which she bequeathed her entire estate in favour of defendants No.2 to 4. So much so, recitals in the Will (Ex.D1) revealed that the testator had set out detailed reasons and circumstances for excluding the plaintiffs from her estate.

Learned counsel for the appellants could not point out as to how the findings that were concurrently recorded by both the Courts were either contrary to the position on record or suffered from any material illegality.

In the wake of the position as set out above, there hardly exists any ground, least plausible in law to interfere with the decree being assailed in the present appeal. No question of law, much less

any substantial question of law, arises for consideration in the present appeal. The same being devoid of merit is accordingly, dismissed.

19.02.2015
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(ARUN PALLI)
JUDGE