

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.2515 of 2015 (O&M)
Date of Decision: July 23, 2015

Braham Parkash

...Appellant

Versus

Smt.Santosh through LRs

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Amit Sheoran, Advocate
 for the appellant.

INDERJIT SINGH, J.

Appellant-plaintiff Braham Parkash has filed this regular second appeal against respondent-defendant Smt.Santosh through LRs, challenging the impugned judgment and decree dated 24.03.2015 passed by learned Addl. District Judge, Jhajjar, vide which the judgment and decree dated 16.08.2013 passed by learned Addl. Civil Judge (Senior Division) Bahadurgarh decreeing the suit of the plaintiff, was set aside.

The brief facts of the case are that plaintiff-appellant Braham Parkash filed a suit against Smt.Phoolpati and Smt.Santosh, defendants, for declaration to the effect that mutation No.1638 and Fard Jamabadi of the year 2002-03 in regard to the suit land, are illegal, null and void and plaintiff along with his brother Shri Om is owner in possession of the suit property. It is further prayed that

defendants be restrained from alienating the suit property, in any manner or dispossessing the plaintiff from the suit property. The case of the plaintiff is that the suit land was owned by Sobha, who used to reside with the plaintiff and his brother Shri Om. The defendants are the daughters of Sobha and they used to reside at their matrimonial home. Therefore, Sobha executed a Will in their favour in regard to the suit property on 17.02.1981. Sobha expired in the year 1991 and the plaintiff along with his brother constructed house over the suit property in the year 1993 and have been residing over the same and they have electric connection etc. in the suit property.

On the other hand, the case of the defendants is that they being the real daughters of Sobha, inherited the suit property and the plaintiff and his brother have no right, title or interest in the same. It is also stated that Will dated 17.02.1981 was got cancelled by Sobha vide cancellation deed dated 10.03.1981. The possession of the plaintiff and his brother on the suit land was denied. It is further stated that father of the defendants had constructed boundary wall and two rooms on the suit land and the electric connection over the same is in the name of Dharampal licensee. It is also stated that Will was result of fraud and fabrication.

After framing the issues and on the basis of the evidence led by the parties, learned Addl. Civil Judge (Senior Division) Bahadurgarh, decreed the suit of the plaintiff vide judgment and decree dated 16.08.2013. Learned Addl. Civil Judge held that in the absence of original document, Will cannot be cancelled. It is further

held that recitals in the cancellation deed Ex.DW1/D does not mention any fraud on the part of plaintiff and his brother. It is further held by learned Addl. Civil Judge that the register of the scribe DW-2 Durga Dutt Kaushik has been withheld. The Court relied upon the Will Ex.PW4/A showing that plaintiff and his brother served Sobha and he was very happy on account of their services.

Aggrieved from the above-said findings, an appeal was filed by defendants and the findings given by learned Addl. Civil Judge (Senior Division) Bahadurgarh were set aside by learned Addl. District Judge, Jhajjar, vide judgment and decree dated 24.03.2015.

Aggrieved from the above-said judgment and decree passed by learned Addl. District Judge, Jhajjar, present regular second appeal has been filed by the appellant-plaintiff.

At the time of arguments, learned counsel for the appellant argued that the cancellation deed has not been proved by bringing cogent evidence. Only copy of the cancellation deed has been produced and further the fingerprints have been compared by the expert from the photocopy. He next contended that scribe has not produced the original register, therefore, he argued that cancellation deed has not been proved, as per law. Learned counsel for the appellant argued that the judgment and decree passed by learned Addl. District Judge, Jhajjar is not as per law and liable to be set aside.

I have heard learned counsel for the appellant and have gone through the record.

From the record, I find that it is admitted fact that Sobha, father of the defendants was owner of the suit property. It is also admitted fact that plaintiffs are nowhere related to Sobha. At the time of arguments, learned counsel for the appellant admitted that plaintiffs are co-villagers of Sobha. When there are two married daughters, why Sobha will ignore his real daughters and bequeath his property to the strangers, who are not even distantly related to him. This is the suspicious circumstance surrounding the Will, which is to be explained by the plaintiffs. But there is no cogent evidence on record to explain this suspicious circumstance.

Secondly, the Will has been cancelled vide cancellation deed dated 10.03.1981 i.e. within 20 days. The cancellation deed is a registered document. The witnesses of the Will as well as Sub Registrar have already died. The defendants have produced certified copy of cancellation deed Ex.DW1/D with permission of the Court in secondary evidence, therefore, it cannot be argued that it is a photocopy. The scribe namely Durga Dutt has been examined as DW-2, who has deposed that he scribed the cancellation deed dated 10.03.1981 on the asking of executant Sobha. He duly entered remarks regarding said document in his register at serial No.191. He also tendered relevant extract of his register Ex.DW1/E. During cross-examination, he clarified that Sobha on 17.02.1981 got Will registered vide No.3/106 and at that time, he (DW-2) obtained thumb impression of the executants in his register and that at the time of cancellation deed also, he obtained thumb impression of the executants in his

register. The contents of the cancellation deed have been duly proved by the scribe. The defendants also examined DW-3 D.K.Bhardwaj, who gave report Ex.DW3/A and deposed that thumb impression of Sobha was duly compared by him with admitted thumb impression of Sobha. No expert has been examined by the plaintiffs to rebut his report. Again, record keeper DC Office, Jhajjar appeared as DW-4 and he also deposed that cancellation deed Ex.DW1/D is the true certified copy of the record maintained by their office. Both the attesting witnesses have died. The son of the then Sub Register also appeared. Mere non-production of deed writer's register will not lead to the inference that cancellation deed has not been proved as per law.

In view of the above discussion, I find that vide judgment and decree dated 24.03.2015, learned Addl. District Judge, Jhajjar has rightly set aside the judgment and decree passed by learned Addl. Civil Judge (Senior Division) Jhajjar. The findings given by learned Addl. District Judge, Jhajjar are correct, as per law and evidence and do not require any interference from this Court and the same are upheld. No substantial question of law arises in this regular second appeal.

Therefore, finding no merit in the present regular second appeal, the same is dismissed.

July 23, 2015
Vgulati

(INDERJIT SINGH)
JUDGE