

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 2647 of 2015 (O&M)
Date of Decision : 18.12.2015

Anil KapoorAppellant

Versus

Kamal Kapoor and othersRespondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Pritam Saini, Advocate
for the appellant.

Surinder Gupta, J.

This second appeal has been filed by Anil Kapoor-plaintiff against the concurrent judgments of Courts below whereby his suit seeking relief of separate possession by way of partition of suit property and for permanent injunction restraining the defendants from alienating specific portion more than their share in the property in question without partition was dismissed.

2. In later part of the judgment parties will be referred to as 'plaintiff' and 'defendants' as per civil suit.

3. Plaintiff's case, in brief, is that the suit property, as fully described in the headnote of plaint, was originally owned by Ramji Dass Kapoor, father of parties to suit. He died on 13.11.1978 leaving behind plaintiff, defendants and his wife Madalsa Kapoor. After the death of Ramji Dass Kapoor, plaintiff and defendants surrendered their rights in suit property in favour of their mother Madalsa Kapoor who became owner of the suit property. Madalsa Kapoor died in the year 1992 and after her death, plaintiff and defendants being her only legal heirs

inherited the property in dispute in equal shares. As plaintiff was not getting proper fruits of his share in the suit property he sought separation of the same by way of partition.

4. Defendant no. 1-Kamal Kapoor contested the claim of plaintiff *inter alia* pleading that plaintiff has concealed material facts in this case pertaining to earlier suit bearing No. 550 of 1984 between plaintiff and defendants. In that suit Madalsa Kapoor was also arrayed as defendant by plaintiff. Madalsa Kapoor died during pendency of that suit and defendant no. 1-Kamal Kapoor was impleaded as her legal representative. Plaintiff did not move any application to get himself impleaded as legal heir of Madalsa Kapoor. That suit was dismissed and the appeal was accepted. Regular Second Appeal was filed in this Court in the year 1996, which is pending. Ramji Dass Kapoor had executed Will dated 10.02.1977 in favour of Madalsa Kapoor and this fact was also concealed by plaintiff. During his life time, Ramji Dass Kapoor bequeathed 1/5th share of the suit property each to plaintiff and defendant no. 1 which they later sold in favour of Madalsa Kapoor. Remaining 3/5th share in the suit property came to Madalsa Kapoor through Will of Ramji Dass Kapoor dated 10.02.1977. Defendant no. 1 has alleged that vide Will dated 04.12.1988, Madalsa Kapoor bequeathed the suit property i.e. Indira Market in favour of Salim Kapoor son of defendant no. 1 and her house No. 396, Lajpat Nagar, Jalandhar in favour of defendant no. 1. Plaintiff had not contested the validity of Will of Madalsa Kapoor in Civil Suit No. 550 of 1984. Plaintiff was ignored by Madalsa Kapoor from inheritance of her

property as he had filed successive suits against her. Will dated 04.12.1988 was produced in Civil Suit No. 550 of 1984 filed by plaintiff and he had deliberately concealed this fact in the plaint.

5. Learned Civil Judge (Junior Division), Jalandhar discarded the plea of plaintiff that he has share in the property known as Indira Market Old Railway Road (Old Moti Mehal), Jalandhar and Kothi No. 396, Lajpat Nagar, Jalandhar and upheld Will dated 04.12.1988 executed by Madalsa Kapoor whereby Anil Kapoor-plaintiff was not given any share. Learned Civil Judge (Junior Division) observed that execution of Will dated 04.12.1988 by Madalsa Kapoor in her sound disposing mind was duly proved by examination of marginal witness Savinder Singh Makin as DW-2. In the Will she had categorically mentioned that her son Anil Kapoor used to misbehave with her and his attitude was not of a good son who dragged her into numerous litigation and had also grabbed numerous properties and business left by Ramji Dass Kapoor. She had also stated in the Will that Anil Kapoor had been doing his separate business and due to his ill behaviour she had disinherited him from her estate. Learned Civil Judge (Junior Division) also took note of the fact that Anil Kapoor had also admitted that his relations with his mother were not very smooth and he had instituted cases against her. His parents had not even attended his marriage which he performed against their wishes. Ist Appellate Court discussed regarding the Will executed by Madalsa Kapoor in detail and observed in para 26 of the judgment as follows:-

“26. So, far as the execution of the will dated

4.12.1988 Ex.D9 by Smt. Madalsa Kapoor is concerned, a perusal of it shows that same was scribed by Shri Charanjit Singh Ahuja, Advocate, witnessed by Sh. G.S. Kalra, resident of B-25 Nizamudin West, New Delhi and Sh. S.S. Makin, 60 Model Town Jalandhar, whereby she bequeathed suit property Indira Market in favour of Salim Kapoor, her grand son and bequeathed suit property house No.396, Lajpat Nagar, Jalandhar in favour of Kamal Kapoor. It has come in evidence on record that plaintiff was residing separate from Smt. Madalsa Kapoor and she had been residing with Kamal Kapoor. The plaintiff had filed a civil suit No.550/84 against Registrar of Companies and others including Smt. Madalsa Kapoor, which was partly decreed by the Court of Sh. C.D. Gupta, the then learned Addl. Civil Judge (Sr. Div.) Jalandhar, vide judgment and decree dated 5.2.1996 and during the pendency of the said suit Madalsa Kapoor died and Kamal Kapoor moved an application to implead him as legal heirs of Madalsa Kapoor on the basis of will dated 4.10.1988. First appeal against the said decree was allowed by the learned Addl. District Judge Jalandhar, vide judgment and decree dated 30.10.1996 and the Regular Second

Appeal has been dismissed by the Hon'ble High Court vide order dated 4.9.2009. However, in the instant case the execution of the said will has been duly proved by the defendant No.1 by examining DW-2 Savinder Singh Makin, one of the attesting witness of the said will and there is no dent in his statement. A perusal of the said will Ex.D9 reveals that Madalsa Kapoor has clearly mentioned that her son Anil Kapoor used to misbehave with her and his attitude was not that of good son. He had dragged her into number of litigation and had also grabbed numerous property and business left by Ramji Dass Kapoor and had also mentioned that Anil Kapoor had been doing his separate business and due to his ill behaviour she has disinherited him from her estate. She has also mentioned that her two daughters Mrs. Mala Katyal, (Pinki) and Mrs. Madhvi Malhotra (Bawa) have been married by them and they had spent huge amount of money at the time of their marriage. However she bequeathed that the amount of her deposit lying with M/S Pal Finance Company of Kanpur, whatsoever is outstanding in her favour at the time of her death be given equally to her daughters. Nothing else be given to them. She

also mentioned that she has only one grand son Master Salim Kapoor (Kunnu) son of Kamal Kapoor, she bequeathed her property known as Indira Market, Railway Road, Jalandhar to her grand son Master Salim Kapoor. Thus, she has assigned the reasons of disinheriting Anil Kapoor from her inheritance. The learned trial Court has rightly observed that there (sic is) no suspicious circumstances surrounding (to) the said will. Rather the basic intention behind execution of the will was to deviate from natural line of succession and vest the rights in certain properties in favour of one person to the exclusion of others and has rightly observed that by virtue of will dated 4.12.1988 proved on record as Ex.D9, executed by Smt. Madalsa Kapoor, Anil Kapoor had been totally disinherited from succeeding the properties in dispute and fell to the share of Kamal Kapoor and his son. That being so, plaintiff is not entitled to the relief sought by him. The findings of the learned Trial Court on both the issues are based on correct appreciation of evidence on record and same are, thus, affirmed.”

6. During course of arguments, learned counsel for the appellant has argued that even if Madalsa Kapoor had strained relation with plaintiff still a mother never disinherits her son.

Instead of ignoring him she would have given him lesser share in the property than the other son with whom she was residing.

7. The above argument of learned counsel for the appellant carries no weight as the Will is usually executed when owner of the property has to deviate from natural succession. Not only plaintiff, Madalsa Kapoor had also not given any share in suit property to her daughters but they appeared to be not aggrieved. The Courts have not to comment upon the choice of testator for bequeathing his/her property. From the facts, it is apparent that Madalsa Kapoor was having strained relations with plaintiff and had elaborately discussed in her Will the reasons for not giving any share in her property to plaintiff. The Will is duly proved and is not shrouded by any suspicious circumstances. There is nothing that findings of Courts below are based on misreading or misinterpretation of evidence on record.

8. On perusal of judgments of Courts below, I find no legal or factual infirmity therein calling for any interference. No substantial question of law requiring determination arises in this appeal, which has no merits.

Dismissed.

December 18, 2015
jk

(SURINDER GUPTA)
JUDGE