

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

**RSA No.2938 of 2015 (O&M)
Date of Decision: 27.11.2015**

Harbans Lal

.....Appellant

Versus

Dev Raj and others

... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Sunil Agnihotri, Advocate
for the appellant.

RAJ MOHAN SINGH, J.(Oral)

[1]. Plaintiff has filed this appeal against the concurrent judgments and decrees passed by the Courts below in a suit for declaration and permanent injunction.

[2]. Plaintiff alleged that the suit land was originally owned and possessed by deceased Khushia i.e father of the plaintiff and defendants No.1,2,10 and 11. Khushia was grand father of defendants No.3 to 5 and 7 to 9. He was father-in-law of defendant No.6 and maternal grand father of defendants No.12 to 14. Plaintiff further alleged that after the death of Khushia, all his legal heirs are entitled to inherit the suit land in accordance with the provisions of Hindu Succession Act. Plaintiff claimed 1/8th share. Diwan Chand son of Khushia had died who was succeeded by defendants No.3 to 9. One daughter namely Nasib Kaur had also died. Defendants No.12 to 15 have

succeeded her. Defendants No.3 to 9 relied upon Will dated 04.06.2001 allegedly executed by deceased Khushia in their favour. Said Will was claimed to be forged and fabricated and was a result of impersonation.

[3]. The suit was contested by the defendants on all counts. On merits, it was pleaded that Khushia executed a valid Will during his lifetime in favour of his son Diwan Chand and grand sons namely Dilawar Singh and Dharam Pal. The Will was duly registered in the office of Joint Sub Registrar, Talwara. Deceased Khushia had purchased the suit property vide three different sale deeds dated 02.12.1971, 21.11.1969 and 31.05.1977. The property was self-acquired property of deceased Khushia. The Will was executed in favour of Diwan Chand, Dilawar Singh and Dharam Pal on account of love and affection of services rendered by them to Khushia during lifetime of deceased Khushia.

[4]. On the pleadings of the parties following issues were framed:-

“1. Whether the plaintiff is entitled to the relief of declaration as prayed for?

OPD

2. Whether the plaintiff and defendants are the LR's of deceased Khushia and the plaintiff is entitled to

*succeed 1/8th share of the suit land?
OPP*

*3. Whether the Will dated 4.6.2001 of
deceased Khushia is forged and
fabricated document? OPP*

*4. Whether the plaintiff is entitled to
the relief of permanent injunction as
prayed for? OPP*

*5. Whether suit is maintainable in the
present form? OPP*

*6. Whether the plaintiff has got locus
standi to file the present suit? OPP*

*7. Whether the suit is within limitation?
OPP*

*8. Whether the plaintiff has not come
to the court with clean hands? OPD*

9. Relief.”

[5]. Both the parties led their respective evidence on the
aforesaid issues to prove their case.

[6]. Plaintiff got himself examined as PW1 and also
examined Som Raj as PW2. Defendants got examined Surinder
Kumar as DW1, Tarsem Lal as DW2, Karam Chand as DW3,
Tilak Raj as DW4, Rohit Sharma as DW5, Puran Chand as
DW6 and Dilawar Singh as DW7.

[7]. Trial Court took issues No.1 to 4 jointly and gave
findings collectively to hold that the Will Ex.D1 stands duly

proved on the basis of evidence on record. Since Diwan Chand had died before Khushia, therefore, Section 109 of the Indian Succession Act will have precedence over Section 105 of the Indian Evidence Act and the legacy will not lapse but devolve as per Section 109 of Indian Succession Act.

[8]. Defendants No.3 and 5 are lineal descendants of Diwan Chand, therefore, death of Diwan Chand prior to Khushia will not make the bequest to be lapsed but shall take effect as if the death of the legatee had happened immediately after the death of the testator, unless contrary intention appears by the Will.

[9]. Since the Execution of Will was proved, therefore, issues No.1 to 4 were decided against the plaintiff and in favour of the defendants No.1, 3, 4, 6 to 11. Issues No.5 and 6 were dependent upon the findings of issues No.1 to 4 and therefore, these issues were also decided in favour of defendants. Issue No.8 was not pressed by the defendants, therefore it was decided in favour of plaintiff. Issue No.7 was also decided in favour of plaintiff and against the defendants.

[10]. Resultantly, the suit was dismissed by the trial Court vide judgment and decree dated 02.05.2013. Plaintiff remained unsuccessful before the Lower Appellate Court who dismissed the appeal vide judgment and decree dated 22.12.2014.

Appellant has not formulated any substantial question of law in his grounds of appeal.

[11]. I have considered the submissions made by the learned counsel for the appellant at some length.

[12]. Will Ex.D1 has been proved on record with reference to evidence of DW 1 Surinder Kumar, Registration Clerk from the office of Sub Registrar who stepped into witness box and proved certified copy of Will dated 04.06.2001 as Ex.D1 and endorsement of the Sub Registrar as Ex.D2. The witness stood firm the test of cross examination. Similarly Tarsem Lal, deed writer has been examined as DW 2 who also proved the original Will dated 04.05.2001 as Ex.D1. The Will was scribed by him at the instance of Khushia. After subscribing the Will he read over the contents of the Will to Khushia who after admitting the same to be correct, signed the same. The witness also signed the Will. The witness also proved the entry made in his register with regard to subscribing of the Will. The entry has been proved as Ex.D3. Khushia was stated to be in sound state of mind. Similarly, Karam Chand also stepped into witness box as DW3 and has proved the contents at par with DW2. Tilak Raj DW4 Registration Clerk of Sub Registrar office has also proved the sale deed vide which Khushia had purchased the land in question. DW 5 Rohit Sharma has proved copy of register

maintained by his father, a deed writer with regard to entry No.1419 dated 01.12.1971 as Ex.DW5/A. The witness also stood firm the test of cross examination. Similarly, Puran Chand stepped into witness box as DW6 and proved on record the certified copy of sale deed dated 31.05.1977 as Ex.DW6/A and the endorsement of Sub Registrar as Ex.DW6/B. The witness also stood firm the test of cross examination. Dilawar Singh stepped into witness box as DW7 and tendered his duly sworn affidavit as Ex.DW7/A wherein he reiterated the contents of written statement in totality and also proved *jambandi* for the year 2000-01 Ex.D7 and Mutation No.2379 as Mark A. He also admitted that his grand father Khushia died on 07.01.2004 and was more than 100 years of age. The execution of Will has been proved by overwhelming evidence.

[13]. Learned counsel for the appellant has contended that Khushia was more than 100 years of age and therefore, he should be presumed to be mentally unfit and feeble in understanding things. No medical evidence has come forth on record at the instance of the plaintiff, indicating that the mental state of health of Khushia was not good, rather, as per evidence of defendants particularly DW7 Dilawar Singh, Khushia was of sound health and he died after about 3 years of execution of Will in question. Will is meant to be dislodge someone from

natural course of succession in respect of property. The ground of disinheritance of the appellant cannot be treated to be a ground to presume that the Will is shrouded by any suspicious circumstance. Reference can be made to ***Mahesh Kumar (dead) through LRs Vs. Vinod Kumar 2012(2) RCR (Civil) 493.***

[14]. Since Diwan Chand has pre-deceased Khushia, therefore, Section 109 of Indian Succession Act will override Section 105 of the Act and the bequest shall not lapse but shall take effect as if the death of the legatee has happened immediately after the death of the testator. No substantial question of law has been pleaded nor the same is found to have been involved in view of proved facts on record.

[15]. The judgments and decrees of the Courts below are neither found to be the result of misreading of evidence nor having suffered with any perversity of any kind. The findings recorded by the Courts below are based on proper appreciation of evidence. Re-appreciation in second appeal is not permissible. Resultantly, I do not find any substance in this appeal and the same is accordingly dismissed in limine.

November 27, 2015
Prince

(RAJ MOHAN SINGH)
JUDGE