

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.3619 of 2015 (O&M)
Date of Decision: July 31, 2015

Rajbala and others

...Appellants

Versus

Shiv Kumar and another

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.N.K.Malhotra, Advocate
 for the appellants.

INDERJIT SINGH, J.

Appellants-plaintiff and defendants No.2, 4 and 5 have filed this regular second appeal against respondent-defendant Rajbala and defendant No.3 Darshana, challenging the impugned judgment and decree dated 07.03.2014 passed by learned Civil Judge (Senior Division) Jhajjar, vide which the suit of the plaintiff for mandatory injunction was dismissed and also the judgment and decree dated 19.05.2015 passed by learned District Judge, Jhajjar, vide which the appeal filed by appellants was dismissed.

The brief facts of the case are that plaintiff-appellant Rajbala filed a suit against defendants Shiv Kumar, Smt.Sushila, Smt.Darshana, Smt.Omwati and Smt.Devki, seeking declaration by declaring the disputed adoption deed and Will and consequent mutation as illegal, invalid, fraudulent and ineffective qua 1/5th share of the plaintiff in the suit property. It is the case of the plaintiff that one

Ram Lal was owner in possession of the ancestral agricultural land and two residential houses situated at ward No.2 were also owned and possessed by Ram Lal. The suit property came to Ram Lal as ancestral Hindu undivided family property and he died on 05.03.2006 leaving the plaintiff and defendants No.2 to 5 as LR's, who inherited the suit property in equal shares. Smt.Roshni wife of Ram Lal also died on 29.10.2006. When the plaintiff approached the revenue authority to record the mutation of inheritance on death of her father Ram Lal and subsequent death of her mother Roshni, it was told to her that the suit land has been mutated vide mutation No.9224(A) dated 12.08.2006 in the revenue record. The plaintiff has challenged the impugned adoption deed and Will allegedly made by her father Ram Lal in favour of defendant No.1, as invalid, illegal and fraudulent.

Upon notice, defendants filed separate sets of written statements. Defendant No.1 contested the suit and submitted that neither there was any Hindu undivided family nor the properties in dispute were ancestral. Rather, the properties in dispute were self acquired by Ram Lal. Defendant No.1 was duly and legally taken in adoption by Ram Lal in childhood at the age of five years. It is further submitted that Ram Lal, in lieu of services rendered by defendant No.1 and due to love and affection, executed the impugned Will. It is also submitted that plaintiff herself had consented for the adoption and Will and in token of that, she being attesting witness, put her thumb impressions on the Will and adoption deed. The Will and adoption deed are legal and duly binding upon the plaintiff.

Defendant No.3 did not appear and was proceeded against ex parte. Defendants No.2, 4 and 5 supported the version of the plaintiff.

After framing the issues and after the parties led evidence, learned Civil Judge (Senior Division) Jhajjar, dismissed the suit of the plaintiff by holding that Will Ex.D1 is legal, valid, genuine and duly binding upon the rights of the plaintiff. Aggrieved from the above-said judgment and decree, two appeals i.e. one by present appellants and other by Shiv Kumar were filed and learned District Judge, Jhajjar, vide judgment and decree dated 19.05.2015, dismissed both the appeals by upholding the findings given by learned Civil Judge.

Aggrieved from the above-said judgments and decrees, present regular second appeal has been filed by appellants.

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

From the record, firstly I find that the findings given by the Courts below are concurrent. Nothing has been pointed out as to which evidence has been misread by the Courts below and how the findings given by the Courts below are perverse. Nothing has been pointed out as to which substantial question of law arises in this regular second appeal. The case is mainly decided on the findings of fact which have been given as per the evidence by both the Courts below.

Further, I find that while discussing the nature of the property, whether it being ancestral, no evidence has been produced

on record. As regarding the adoption deed Ex.D2, learned Civil Judge has not relied upon this document because on every certificate of education, the name of father of Shiv Kumar defendant No.1 is mentioned as Ishwar Singh and not Ram Lal. Otherwise also, defendant No.1 has not filed any appeal before this Court to challenge this finding.

As regarding the Will executed by Ram Lal in favour of Shiv Kumar, I find that defendant No.1 Shiv Kumar is son of defendant No.3 Darshana, daughter of Ram Lal. As both the attesting witnesses have died, therefore, they could not be examined. The Scribe has specifically deposed that testator Ram Lal approached him and Will was prepared on his instructions. The Will was read over to the testator, who after understanding the same as correct, signed/thumb marked the Will along with other witnesses. The Registrar Amir Singh DW-7 has also been examined, who also deposed that Will Ex.D1 was produced before him and the testator admitted the correctness of the Will and testator and witnesses signed over it in presence of each other. Ex.D1 was read over and got understand by him to the testator and witnesses and they signed and thumb marked the same in token of its correctness.

It is also clear from the evidence on record that Ram Lal was having only daughters and defendant No.1 is son of one of the daughters of Ram Lal, It is in the evidence and even plaintiff has admitted that Ram Lal and his wife Roshni were served by defendant No.1 during the entire life time. The lower Court held that it is

evidence on record that defendant No.1 has been the supporting hand of testator Ram Lal and his wife Smt.Roshni. When it is admitted that defendant No.1 was rendering service and the other daughters are married daughters of Ram Lal, therefore, there is no suspicious circumstance surrounding the Will. The Court has also taken note of the fact that there is no pleading of the plaintiff that thumb impressions of Smt.Roshni and defendants No.2 to 4 were taken on Will in question in fraudulent manner. The Will is having signatures and thumb impressions of Roshni wife of Ram Lal and defendants No.2 to 4.

The findings given by both the Courts below are concurrent, as per law and evidence. There is nothing on the record to show as to which evidence has been misread and how the findings given by the Courts below are perverse. The evidence produced by the parties has been appreciated in right perspective by the Courts below.

In view of the above discussion, I find that the judgments and decrees passed by the Courts below are correct, as per evidence and law and do not require any interference from this Court and the same are upheld. No substantial question of law arises in the present regular second appeal.

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

July 31, 2015
Vgulati

(INDERJIT SINGH)
JUDGE