

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

RSA No.2750 of 2014(O&M)
Date of decision: 12.01.2015

Naresh Chander Chawla

...Appellant

Versus

Mahesh Chander Chawla and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Akshay Bhan, Senior Advocate with
Mr. Santosh Sharma, Advocate for the appellant.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not? YES
3. Whether the judgment should be reported in the digest?

ARUN PALLI J. (Oral)

Suit filed by plaintiff i.e. Mahesh Chander Chawla, was decreed by the trial court vide judgment and decree dated 01.03.2011. Appeal preferred against the said decree failed and was dismissed on 07.02.2014. This is how, defendant No.1 is 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 a suit filed by the plaintiff, he prayed for a declaration that he was the exclusive owner of the eastern portion consisting of four rooms, kitchen, bathroom, stairs and courtyard of house No.114, Model Colony, Yamuna Nagar. And also owner of upper storey of shop No.42, New Market,

Yamuna Nagar, pursuant to a will dated 23.05.1994, executed by Khan Chand son of Tikaya Ram. It was averred that Khan Chand, who happened to be the owner of the suit property, executed a will dated 23.05.1994, and bequeathed eastern portion of the house in question and upper storey of the shop in favour of the plaintiff and transferred western portion of house No.114 and ground floor of shop No.42 to defendant No.1. Khan Chand died on 11.04.1996, leaving behind plaintiff and defendants, as his natural heirs. Widow of Khan Chand i.e. Parvati Devi also died on 28.11.2000. Further, post death of Parvati Devi, defendant No.1 started asserting his right qua the property in possession of the plaintiff on the basis of a will, allegedly executed on 11.03.1996, by Khan Chand in favour of his wife Parvati Devi, and also a will dated 07.05.1998, purportedly executed by Parvati Devi in favour of defendant No.1 i.e. Naresh Chander Chawla. But Khan Chand never executed any will in favour of Parvati Devi. Thus, the will being propounded by defendant No.1 in his favour, dated 07.05.1998, was of no consequence. As defendant No.1 started asserting his exclusive right over specific portion of the suit properties, on the basis of the aforesaid two wills, thus, the suit.

In defence, it was pleaded, inter alia, that double storey house No.114, situated at Model Colony, Yamuna Nagar, consisted of nine rooms, three kitchens, two

verandahs, one store, two bathrooms and one bathroom latrine attached. And two latrines on first floor and staircase. Similarly, shop No.42 was double storeyed situated at New Market. Execution of the will dated 23.05.1994, by Khan Chand in favour of plaintiff and defendant No.1, was vehemently denied. It was maintained that relations between plaintiff and Khan Chand were not cordial and in fact, a complaint was made by Khan Chand and Parvati Chawla against plaintiff to SP, Yamuna Nagar. Therefore, there could not be any occasion for still executing a will in favour of the plaintiff. Further, pursuant to a will dated 11.03.1996, executed by Khan Singh, he bequeathed his entire moveable and immoveable property in favour of his wife Parvati Devi. And post death of Khan Singh, Parvati Chawla became the absolute owner of the estate of her husband. She during her lifetime executed a will dated 07.05.1998, regarding all her properties including the suit property, and pursuant to the said will, she bequeathed upper portion of shop No.42, in favour of the plaintiff along with the staircase and transferred ground floor of the said shop in favour of defendant No.1. As regards the house in question, she bequeathed the portion marked as ABCD, shown in red colour in the site plan, consisting of two rooms, one kitchen and some portion of the courtyard to plaintiff, being western portion of the house including roofs of the rooms and kitchen given to the plaintiff,

and eastern portion was transferred to the defendant. And a staircase was to be jointly owned and used by the parties. Accordingly, ground floor of shop No.42, was alienated by the defendant to one Ajay Kumar, vide sale deed dated 28.06.2002.

Defendant No.5 filed a separate written statement and pleaded that he was in actual physical possession of the ground floor of shop No.42, being its owner, pursuant to a sale deed dated 28.06.2002, and for a valuable consideration.

Trial court, on a consideration of the matter in issue and evidence on record, found that Khan Chand i.e. father of the parties, had actually executed a lawful and valid will (Ex.P1), vide which he had bequeathed eastern portion of the house in question and upper storey of the shop to the plaintiff. And western portion of the house and the ground floor of the shop in question to defendant No.1. Will (Ex.P1) was not scribed through a professional Deed Writer, but was written by Khan Chand himself in Urdu. Its execution was witnessed by two witnesses, namely, Sewa Singh and Sham Sunder. Recitals of the will showed that the deceased intended to distribute the house as well as the shop equally in favour of both his sons. Front portion of the house in question was bequeathed to Mahesh Chand (plaintiff) and back portion of the said house to Naresh Chand (defendant No.1). Staircase was to be jointly owned by both the sons and was to remain

common. Likewise, upper storey of the shop in question was bequeathed in favour of the plaintiff, whereas Naresh Chand had inherited the ground floor of the said shop. It was observed that will (Ex.P1) was not shrouded by any suspicious circumstance nor any evidence was brought on record to prove so. Further, to resolve the dispute, if any, between his two sons, the deceased with a view to settle the affairs during his lifetime, thought it wise to execute the will (Ex.P1) Defendants No.2 to 4, who happened to be the daughters of Khan Chand, though filed separate written statements, but did not choose to contest the suit subsequently and were thus, proceeded against ex parte. Accordingly, it was observed that defendants No.2 to 4 indeed had no objection to the will (Ex.P1), executed by their father Khan Chand, to their exclusion. No doubt, there was some dispute between Khan Chand and the plaintiff, but nothing was brought on record to show that the situation had come to such a pass and Khan Chand was so distressed and pained that he never intended to give anything to his son Mahesh Chand. In fact, vide a will dated 07.05.1998 (Ex.D2), that is purportedly executed by Parvati Chawla, even she bequeathed a share in favour of the plaintiff out of the suit properties. Thus, it was observed that if she was actually unhappy with the plaintiff then, there was no occasion to give anything to the plaintiff at all. That being so, it was concluded that the execution of the will (Ex.P1), could not be doubted,

especially when one of the attesting witness, namely, Sham Sunder (DW1) proved its due and valid execution.

Will dated 11.03.1996 (Ex.D2), that was propounded by defendant No.1 and was alleged to have been executed by Khan Chand, in favour of his wife Parvati Devi, remained unproved on record. None of the attesting witnesses of the said will was examined. Though, certificates (Ex.D3 & Ex.D4) showed that the said witnesses had died before evidence in the suit commenced, but scribe of the will, who was admittedly alive, was also not examined to prove the will by taking recourse to the provision of Section 69 of the Indian Evidence Act, 1872. Thus, will (Ex.D2) could not be said to have been executed by Khan Chand. Since will in favour of Parvati Chawla remained unproved, will dated 07.05.1998 (Ex.D1) that was purported to have been executed by her, was of no consequence in law. Accordingly, both the wills i.e. Ex.D1 & Ex.D2 were rejected.

Since defendant No.5 had purchased the ground floor of the shop in question, vide sale deed dated 28.06.2002, from none other than defendant No.1, it was held that alienation of the ground floor of the shop by defendant No.1, in favour of defendant No.5, would be protected.

Site plan (Ex.P2) depicts the existing state of affairs of the house in dispute. Keeping in view of the same and the will (Ex.P1), plaintiff would be entitled to four rooms, kitchen,

toilet and half portion of the courtyard towards eastern side and remaining portion in the western side would vest in defendant No.1. Staircase would continue to be common of the parties and it would serve as a dividing line. Accordingly, suit was decreed.

Being dissatisfied with the decree, plaintiff preferred an appeal. First appellate court reviewed the matter in issue, evidence on record and on an analysis thereof found itself in concurrence with the view drawn by the trial court and the findings recorded in support thereof. Accordingly, the appeal was dismissed.

I have heard learned counsel for the appellant at length 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. All what has been urged is that apparently there were cuttings in the will (Ex.P1), which completely changed the very character of the said document. 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, the suit property i.e. house in question and shop No.42, was

owned by Khan Chand. Plaintiff propounded a will dated 23.05.1994 (Ex.P1), vide which eastern portion of the house in question was bequeathed by late Khan Chand in favour of the plaintiff and the western portion of the house was transferred in favour of his other son (defendant No.1). Ground floor of shop No.42 was bequeathed in favour of defendant No.1 and upper portion of the said shop was transferred in favour of the plaintiff. Ex facie, execution of the will (Ex.P1) was duly proved. One of the attesting witness, namely, Sham Sunder (DW1) deposed as regards the due and valid execution of the will dated 23.05.1994. The said witness also testified that the other witness of the will, namely, Sewa Singh had since passed away. Nothing was brought on record by the defendant to even remotely show that the will (Ex.P1) was shrouded by any suspicious circumstances. Still further, will (Ex.P1) was not scribed by any professional Deed Writer but was written by none other than Khan Chand himself. No evidence was led by defendant No.1 to show that the will dated 23.05.1994 (Ex.P1) was either a forged document or suffered from any material deficiency in law. In fact, vide the said will testator equally divided his estate between his two sons. So much so, Khan Chand with a view to obviate any dispute, which could ever occur between his two sons in regard to the suit properties, thought it fit to even divide the properties as indicated in the will. He was conscious of the fact that eastern

portion, that is alleged to be front portion of the house in question, was being bequeathed in favour of Mahesh Chand Chawla (plaintiff) and the back portion i.e. western portion of the house in question, in favour of Naresh Chand Chawla (defendant No.1), therefore, while dividing shop No.42, he bequeathed the prime portion i.e. ground floor in favour of Naresh Chand Chawla and the upper portion was transferred in favour of the plaintiff. In essence, he not only bequeathed his estate in favour of his sons, but even partitioned the same by specifying specific portions to be inherited by them. It was recited in the will that staircase would continue to be common and would serve as a dividing line. As regards certain cuttings in the will (Ex.P1), it was rightly concluded by the first appellate court that the same would not impair its validity and due execution. Particularly, when the will (Ex.P1) was written by hand by Khan Chand himself and was a holograph testament of the deceased. Nothing could be shown as to how the conclusions that were concurrently recorded as regards the due and valid execution of the will (Ex.P1) were either contrary to the position on record or suffered from any material illegality.

In so far as the two wills i.e. 11.03.1996 (Ex.D2) and 07.05.1998 (Ex.D1), propounded by defendant No.1, both were rightly rejected by the courts below. Ex facie, defendant No.1 failed to examine any of the attesting witness of the will

dated 11.03.1996, that was purported to have been executed by Khan Chand, in favour of his wife Parvati Chawla. So much so, even scribe of the said will, who was admittedly alive, was also not examined, to prove the will by taking recourse to provisions of Section 69 of the Evidence Act. That being so, will dated 07.05.1998, that was purported to have been executed by Parvati Chawla, in favour of defendant No.1, completely paled into insignificance.

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. Appeal being devoid of merit is, accordingly, dismissed.

January 12, 2015
Rajan

(Arun Palli)
Judge