

IN THE PUNJAB AND HARYANA HIGH COURT
AT CHANDIGARH

RSA No.3432 of 2014 (O&M)
DECIDED ON: OCTOBER 19, 2015

PREETAM AND OTHERS

...APPELLANTS

VERSUS

PREM CHAND AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest? (✓)

Present: Mr. Manoj Kaushik, Advocate
for the appellants.

JASPAL SINGH J

CM No. 7931-C of 2014

In view of averments made in the application the same is allowed and delay of 13 days' in refiling the instant appeal is condoned.

RSA No. 3432 of 2014 (O&M)

Instant appeal has been preferred against the judgment and decree dated January 21, 2012 whereby, the suit for declaration with consequential relief of permanent injunction was dismissed. The appeal preferred against the afore-said judgment and decree was also dismissed by lower Appellate Court vide judgment and decree dated November 20, 2013.

2. Facts giving rise to the instant *lis* are that late Shri Daulat Ram was the father of the plaintiffs-appellants and defendant-respondent No. 3 and

the grand father of respondents 1 and 2, who were the sons of respondent No. 3. He was owner in physical possession of the suit property measuring 7 Kanals 4 Marlas as per jamabandi for the year 2001-02. He also owned land in villages Ajronda and Tilor Bangar. He died on August 26, 2005 leaving behind the plaintiffs-appellants and defendant-respondent No. 3 as his successors in interest and natural legal heirs. At that time, he was aged about 92 years. The appellants were in actual physical cultivating possession of the suit property as per their share. Part of the property owned by their father had been acquired by the State of Haryana for development of Sector 20-A, Faridabad in village Tilor Bangar and as such, only the plaintiffs/appellants and defendant-respondent No. 3 were entitled to claim the enhanced compensation. The defendants-respondents, in collusion with each other, had defrauded the appellants and late Daulat Ram by fabricating a false Will of Shri Daulat Ram by obtaining his thumb impressions on blank papers. In fact, no such will had been executed by Daulat Ram in their favour. He was very seriously ill in the last days of his life and was of unsound mind. He had been unable to hear for about a decade and was bed ridden. He never executed any Will. The will dated May 20, 2004 attributed to him was a false and forged document. On the basis of the aforesaid will, the defendants-respondents had got mutation No. 5578 dated December 12, 2005 illegally sanctioned in their favour and were trying to alienate the property and claim enhanced compensation on the basis of the aforesaid Will. All efforts of the plaintiffs-appellants to reason with them had failed and hence the present suit.

3. On notice, defendants-respondents appeared and filed their written statement in which certain preliminary objections were raised on the ground of

maintainability, cause of action, valuation of the property, non-joinder and mis-joinder of parties etc. have been taken. Further, it has been averred that Sh. Daulat Ram expired on 26.08.2005 leaving behind the plaintiffs-appellants and defendant-respondent No. 3 as his sons and grand sons. He also executed the registered Will on 20.05.2004 with regard to his moveable & immovable property in favour of defendants-respondents No. 1 & 2, who are in cultivating possession of the land mentioned in para No. 1 of the plaint. The allegations of fraud by way of obtaining thumb impression of Sh. Daulat Ram are concocted one. This Will dated 20.05.2004 had been executed by him with his free volition and affection. All other averments of the plaint have been denied with the prayer to dismiss the same.

4. From the pleadings of the parties, following issues were framed on 21.10.2010, for adjudication of the case:

1. Whether the plaintiffs are entitled to the relief of permanent injunction as prayed for? OPP
2. Whether suit of the plaintiff is not maintainable in the present form? OPD
3. Whether the plaintiffs are estopped by their own act and conduct to file the present suit? OPD
4. Whether the plaintiffs have no cause of action to file the present suit? OPD
5. Whether the plaintiffs have not paid the proper Court fee? OPD
6. Whether the suit is bad for non-joinder of necessary parties? OPD
7. Relief.

5. Parties were afforded ample opportunities to adduce and conclude their evidence in respect of their respective claims and they led oral as well as

documentary evidence.

6. Subsequent thereto, after hearing learned counsel for the parties and scrutinizing the evidence brought on record, the suit of the plaintiffs-appellants was dismissed vide judgment dated January 21, 2012 whereby the suit filed by the plaintiffs-appellants for declaration with consequential relief of permanent and mandatory injunction was dismissed. Appeal challenging the judgment and decree dated January 21, 2012 was also dismissed by the lower appellate court vide judgment and decree dated November 20, 2013.

7. Disheartened with the dismissal of the suit as well as appeal referred to above preferred by the plaintiffs-appellants, he has approached this Court by way of filing Regular Second Appeal.

8. While assailing the judgment and decree dated January 21, 2012 passed by the trial court and upheld by the lower appellate court vide judgment and decree dated November 20, 2013, it has been argued with vehemence by learned counsel for the appellants that the same are illegal and erroneous and are against the evidence available on record and are result of mis-appreciation of evidence. The case of the appellants-plaintiffs is that Daulat Ram, father of the appellants, inherited the suit land after the demise of his father Sh. Hari Singh Saini. Respondents-defendants have alleged that Daulat Ram Saini allegedly made a Will dated May 20, 2004 thereby bequeathing his property in favour of his grand-sons namely Prem Chand Saini and Gaurav Saini, sons of Jeetan Saini. In fact, Daulat Ram Saini was 90 years of age at the time of alleged execution of Will dated May 20, 2004. He was also not enjoying good health. Rather, for the last more than 10 years prior to the alleged execution of Will, he had lost his mental as well as hearing capabilities and for the last about 2 years prior to his death, he was totally bedridden . He was even unable to

recognise the nearest relatives and family members. The Will in question propounded by respondents-defendants is a forged and fabricated document and the same is not binding upon the rights of appellants-plaintiffs. Thus, they are entitled to inherent the property of their father by way of natural succession. Both the courts below have not properly appreciated the evidence produced on record by the appellants-plaintiffs as well as proposition applicable to the facts and circumstances of the case in hand, which has resulted into miscarriage of justice. Since, the Will propounded by the respondents-defendants is the result of fraud and misrepresentation and is not the outcome of the free will and volition of the testator, the same is liable to be ignored and disbelieved. Moreover, the testator never intended to change the land of succession by execution of any Will, especially, in the circumstances that he was being looked after by the appellants-plaintiffs. Both the courts below have wrongly concluded that Will dated May 20, 2004 is a genuine and valid document or that its execution is duly proved. Thus, the impugned judgments and decrees are not sustainable in the eyes of law and are liable to be set aside by way of acceptance of instant appeal and suit of the appellants-plaintiffs merits decretal in-toto.

9. After bestowing due consideration to the submission made by learned counsel for the appellants and scrutinizing the impugned judgments and decrees delivered by both the courts below, this Court is not in an agreement with the submission made by learned counsel for the appellant.

10. It would be appropriate to mention at the outset that the appellants have approached this Court seeking declaration with consequential relief of permanent injunction after the demise of their father on the basis of natural

succession whereas respondents claimed themselves to be the owner and in possession of the property in suit on the basis of Will dated May 20, 2004 executed by Daulat Ram Saini.

11. It is well settled proposition of law a Will like any other document, is to be proved inconsonance with the Indian Succession Act as well as Evidence Act and the onus to prove the execution of the Will is on the propounder. The propounder is also obliged to satisfy the conscience of the Court and to remove all the suspicious circumstances besides proving the testator at testamentary capacity. As per the provisions contained in the Indian Evidence Act though the Will is required to be attested by two witnesses but the examination of one of the attesting witnesses is *sine qua non* for the proof of the Will. The propounder is obliged to establish that the Will has been signed by the testator with his free will and without coercion from any quarter and further that he was in a sound and disposing mind, at the time of execution thereof.

12. Adverting to the facts of the case in hand, it can be said without any hesitation that respondents have successfully discharge their onus with regard to the due execution and registration of Will as well as its validity and legality. The defendants-respondents have examined DW1- Ram Singh one of the attesting witnesses of the Will dated May 20, 2004, who has not only identified his signatures on the Will as attesting witness but has also categorically deposed that on the date of execution of Will, Daulat Ram Saini was hale and hearty and in a sound disposing mind. Another witness examined by defendants-respondents is Chunni Lal as DW-2, who is no doubt related to Daulat Ram but the mere fact that he is the relative of the testator does not

create any suspicion with regard to the execution of the Will. Rather, Chunni Lal while appearing in the witness-box as DW-2 has proved the fact that Daulat Ram Saini executed the Will Ex. PW1/F in favour of defendants No. 1 and 2. Though, he has been thoroughly cross-examined but nothing fruitful to the appellants could be wrenched out of the same. Undoubtedly, Daulat Ram Saini was the absolute owner of the property in suit which was bequeathed by him through Will Ex. PW1/F in favour of defendants No. 1 and 2. There is also nothing on the record to suggest that the Daulat Ram Saini was not in a sound disposing mind at the time of execution of the Will or he was suffering from any serious disease. The mere fact that he was aged about 90 years at the time of execution of the Will, does not *ipso facto* mean that he was not in a sound disposing mind. Moreover, the Will in question is registered one, which further authenticates its genuineness and validity. It has also emerged on record that prior to the execution and registration of Will in favour of defendant No.2, the testator Daulat Ram Saini was being looked after by defendants No.1 and 2. Similarly, the mere disinheritance of the legal heirs by the testator itself is not a suspicious circumstances. Similarly, there is also nothing on the record to prove that the signatures of the testator were obtained by misusing pressure or coercion or undue influence. In fact, the propounders of the Will are successful to remove the suspicious circumstances to the satisfaction of this Court.

13. It would also be important to note here that previously there was some litigation in between Daulat Ram Saini and Heera and in that suit Daulat Ram Saini appeared in the witness box on October 18, 2003 and made the statement in the Court. His appearance in the witness-box is suggestive of the fact that he was able to move to the Court as well as to make statement and to

consider the *pros and cons* of the matter. So, taking into consideration the case of the appellants from any angle, this Court does not find any merit in the instant appeal or find any illegality or infirmity in the impugned judgments and decrees passed by both the courts below.

14. In the light of what has been discussed above, this Court does not find any merit in the instant appeal. Instant appeal being devoid of merit is dismissed. Resultantly, judgments and decrees passed by both the courts below are affirmed with no order as to cost.

OCTOBER 19, 2015
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(JASPAL SINGH)
JUDGE