

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

R.S.A No. 6288 of 2014 (O&M)
Date of decision:- 02.03.2015

Sheel Kumari & anr.

...Appellants

Versus

Satyawart and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Arpandeeep Narula, Advocate,
for the appellants.

RITU BAHRI J.

This regular second appeal is against the judgment and decree dated 10.08.2011 passed by learned Additional District Judge, Rohtak whereby the judgment and decree dated 10.08.2011 passed by the then learned Civil Judge (Sr. Divn.) Rohtak vide which the suit of the plaintiffs-appellants has been decreed partly, has been affirmed by the lower Appellate Court.

Plaintiffs-appellants as well as their mother filed a suit for declaration alleging that plaintiffs-appellants Nos. 1 and 2 are daughters and Smt. Omwati is mother of plaintiffs Nos. 1 and 2 and wife of late Rajinder Pal. After the death birth of plaintiff-appellants No. 1 and 2, Rajinder Pal started harassing Smt. Omwati under the influence of defendant-respondent Nos. 2 and 3 as a result of which, she was forced

to live separately from him. Thereafter, defendant-respondent Nos. 1 and 2 secretly got an adoption deed executed illegally and fraudulently by Rajinder Pal in favour of defendant-respondent No. 1-Satywart (son of defendant Nos. 2 and 3) on 01.06.1991. Rajinder Pal died on 12.11.2006 and thereafter defendants-respondents started harassing and obstructing the plaintiffs-appellants from using the property of Rajinder Pal, though the plaintiffs were entitled to inherit the same. The execution of the will dated 01.06.1991 was challenged on the ground that no consent was taken from plaintiff No. 3 i.e Smt. Omwati by Rajinder Pal for adoption of defendant No. 1 i.e Satyawart. The mandatory ceremonies for adoption were not followed and there was no reason to disinherit the two living daughters i.e present appellants. The will was executed in favour of defendant No. 1 on 01.06.1991 whereby Rajinder Pal gave all his property to defendant No. 1. The defendants appeared and filed their written statement taken the preliminary objections regarding the maintainability of the suit. However, the relationship of the plaintiffs with Rajinder Pal was admitted. It was denied that plaintiff No. 3 i.e Smt. Omwati was forced to live separately from Rajinder Pal and thereafter denied that Rajinder Pal due to some undue influence adopted defendant No. 1. The adoption deed was

registered document. It has been alleged that plaintiff Nos. 1 and 2 i.e present appellants were residing with their mother and they never visited their father Rajinder Pal who during his life time executed a will dated 01.06.1991 in favour of defendant No. 1 regarding all his movable or immovable properties. Plaintiff No. 3 was living separately from Rajinder Pal and had deserted him, later-on divorce was obtained by her.

Thereafter, from the pleading of the parties, the learned trial Court vide order dated 17.11.2008 framed the following issues:-

1. Whether the adoption deed dated 1.6.1991 and will dated 1.6.1991 are illegal, null and void? OPP
2. Whether the suit is not maintainable in the present form? OPD
3. Relief.”

The parties led their respective evidence and vide judgment dated 10.08.2011, the trial Court decided issue No. 1 partly in favour of plaintiffs whereas issue No. 2 was decided against the defendants as the suit being maintainable. The suit of the plaintiffs was decreed partly with costs by learned trial Court.

Feeling aggrieved against the judgment dated 10.08.2011, the plaintiffs filed an appeal. The Lower

Appellate Court examined the deposition of P.W.1-Jyoti who stated that her father had not attended her wedding. Her mother had stopped visiting her father since the year 1980. She and her mother had not come at the time of death of her father as they come to know after many days that her father had expired. Further as per cross examination of PW2 Omwati, she was not having good relations with her husband since the year 1980. She had been residing at Gohana since 1964. She brought up her daughters and married them. Her husband was healthy till the year 2001. She obtained divorce in the year 2001. She further admitted that Rajinder Pal had not participated and did not come to attend the marriages of her daughters and even had not spent anything in the same. Even since 1980, Rajinder Pal had been living with his family i.e his parents, brother and sister and their children at Rohtak. She had not come at the time of death of Rajinder Pal. These facts have been mentioned in the decree of divorce (Ex D1 to D3). In the divorce petition, a written statement has been filed by Rajinder Pal (Ex D4) wherein he had taken a stand that he was not being informed about the marriage of the daughters. The will Ex D9 was executed on 01.06.1991 and testator Rajinder Pal never revoked the same till the year 2006 when he had died. Even after about 15 years, after execution of the impugned

will, Rajinder Pal did not cancel the same during his life and time and did not revoke the same and since it has come in evidence that Omwati and her daughters were living separately since long from him. Since the divorce was granted in the year 2001 and Rajinder Pal was living separately from his family, there exists no suspicion regarding the execution of the will, which was even proved by the testimony of DW4 Ram Dhari, Deed Writer and attesting witness Mahender Pal, D.W.7. The execution of the will in the above circumstances did not suffer from any suspicion and had been duly proved. The finding of the trial Court had been rightly upheld by the lower Appellate Court with regard to the execution of the will. The cross objections filed by the respondents that the learned trial Court committed an error in decreeing the suit partly, were dismissed by the lower Appellate Court on the ground that as per Section 7 of the Hindu Adoptions and Maintenance Act, 1956, the consent of wife has been made a condition precedent for adoption by Hindu male the monetary requirement of the wife's consent enable her to decision making process which vitally affect the family.

Learned counsel for the appellants has argued that the signatures on the will were not proved by the trial Court though the will was duly proved by the testimony of DW4

Ram Dhari, Deed Writer and attesting witness Mahender Pal, D.W.7, the signatures of Rajinder Pal were on the adoption deed, which was a registered document. The adoption deed was discarded on the ground that consent of Omwati had not been taken as per Section 7 of the the Hindu Adoptions and Maintenance Act, 1956, at the time of adoption. Being a registered document, the signatures on adoption deed of Rajinder Pal could not be suspected. Since the date of adoption was on 01.06.1991 and that of will is 01.06.1991, there was no requirement to prove the execution of the will by comparing the signatures coupled with the fact that DW4 Ram Dhari, Deed Writer and attesting witness Mahender Pal, D.W.7 had proved the validity of the will.

The fact that that will was validly executed is a question of fact, which has been gone into by both the Courts below and this finding of fac does not require any interference by this Court.

The judgments passed by both the Courts below, calls for no interference. No substantial question of law arises for adjudication by this Court.

Accordingly, R.S.A is dismissed

March, 02, 2015
G Arora

(RITU BAHRI)
JUDGE