

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No.6337 of 2014 (O&M)
Date of Decision: 29.04.2015

Kamlesh Rani and another

..... APPELLANTS

VERSUS

Veena Rani and others

..... RESPONDENTS

PRESENT: - Mr. Samarth Sagar, Advocate
for the appellants.

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

- 1) Whether Reporters of the 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?

SHEKHER DHAWAN, J.

The present Regular Second Appeal against judgment and decree dated 19.08.2014 passed by the Additiional District Judge, SBS Nagar whereby the appeal filed against judgment and decree dated 17.08.2012 was dismissed.

For convenience sake, hereinafter, reference to the parties is being made as per their status in the Civil Suit.

The detailed facts are already recapitulated in the judgments of the courts below and are not required to

be reproduced. In brief, the facts relevant for disposal of this second appeal are to the effect that the plaintiffs Kamlesh Rani and Rajinder Kumar had filed suit for declaration to the effect that plaintiff No.1 is exclusive owner in possession of house and the plot to the extent of 1/3rd share. Legal representatives of plaintiff No.2 are the exclusive owners in possession of the house and the plot to the extent of 1/3rd share and defendant No.1 is the owner in exclusive possession of the house and plot to the extent of remaining 1/3rd share on the basis of Will dated 24.03.1994 executed by Pritam Devi.

Pritam Devi widow of Faquir Chand was the owner in possession of the suit land. She died on 04.02.2001. As per plaintiffs, she had executed registered Will on 19.10.1987 in favour of plaintiffs in lieu of services rendered by them excluding other two daughters, who are defendants No.1 and 2. Plaintiff No.1 is the daughter and plaintiff No.1 is the husband of plaintiff No.1 and son-in-law of Pritam Singh. As per plaintiffs, defendants No.1 and 2 succeeded in getting the mutation sanctioned in the natural course by producing the forged and fabricated un-registered Will dated 24.03.1994. More so, Pritam Devi had not cancelled her earlier Will dated 19.10.1987. However, at the time of sanction of mutation, no Will was produced by defendants

No.1 and 2. Pritam Devi had already disinherited Veena Rani from her estate through publication.

Defendants contested the suit taking the legal objection. On facts, the defendant took the plea that Pritam Devi was originally the owner in possession of the property. The Will allegedly produced by the plaintiffs was rightly discarded by the Revenue Authorities at the time of sanction of mutation proceeding. Pritam Devi was never served or looked after by the plaintiffs during her life time. She was being looked after by defendant No.1 during her life time and she had executed Will dated 24.03.1994 and the same has been rightly upheld in the mutation proceedings.

On these facts, the Court of First Instance settled the following issues:

1. Whether plaintiff is entitled to the declaration as prayed for? OPP
2. Whether Pritam Devi has executed a Will dated 19.10.1987 in favour of the plaintiff? If so its effect? OPP
3. Whether the plaintiff is entitled for permanent injunction as prayed for? OPP
4. Whether in the alternative, plaintiff is entitled for joint possession of the land in dispute? OPP
5. Whether Pritam Devi has executed a Will dated 29.03.1994 in favour of the defendant No.1 as alleged in the written statement if so its effect? OPP

6. Whether the suit is not maintainable in present form? OPD
7. Whether plaintiff No.2 has got no cause of action or locus standi to file this suit? OPD
8. Whether suit is bad for mis-joinder and non-joinder of parties? OPD
9. Whether plaintiffs are estopped to file this suit, by their act and conduct? OPD
10. Relief."

The Court of first instance after appreciating the oral as well as documentary evidence available on file returned the finding and suit of the plaintiffs was dismissed thereby seeking declaration that suit property of Pritam Devi is to go as her natural succession between all the legal heirs in equal shares.

The plaintiffs challenged the said judgment and decree before the Court for first appeal but remained unsuccessful and, as such, the present Regular Second Appeal before this Court.

Mr. Samarth Sagar, learned counsel for the appellants took the plea that both the Courts below have not appreciated the evidence while returning the findings as defendants had specifically admitted execution of Will dated 19.08.1987.

Learned counsel for the appellants took the plea that if the execution of the Will is not denied, there is no

burden on the party who relies on the Will to prove its execution. On this point reliance was placed upon judgment of Hon'ble Supreme Court in case of **Balathandayutham and another Vs. Ezhilarasan**, (2010) 5 SCC 770 wherein such a law was laid down.

Learned counsel for the appellants also took the plea that in case of registered Will if testator continue to live for seven years after attestation and not taking any step for cancellation, the said fact in itself is a factor which can be taken into consideration for upholding the validity of such Will. On this point, reliance was placed upon judgment of Hon'ble Supreme Court in case of **Savithri and others Vs. Karthyayani Amma and others**, (2007) 11 SCC 621 wherein such a law was laid down.

Having considered the rival contentions raised by learned counsel for the appellant and perusal of the record, this Court is of the considered view that the present controversy revolves around execution of Will by Smt. Pritam Devi. The parties had relied upon two different Wills allegedly executed by Smt. Pritam Devi during her life time. Both the Courts below returned specific findings of fact that the parties to the litigation are entitled to succession as per their natural succession. The oral evidence was discussed in detail. The Court of first instance recorded the finding that

will Ex.P-1 was set aside by Pritam Devi and she had executed another will Ex.D-1 in favour of her three daughters thereby giving equal shares to all the three daughters. The Courts below placed reliance upon another document to establish that Smt. Pritam Devi was living with three daughters during her life time. The will Ex.D-1 was not believed as the same shows the presence of Sarla Devi daughter of Pritam Devi at the time of execution of the Will and, as such, the same was not held to be free Will of Smt. Pritam Devi. The said findings have been duly affirmed by the Court of first appeal. It is settled proposition of law that this Court while deciding regular second appeal not to interfere in the concurrent findings of facts unless the same are proved to be erroneous. However, there are no grounds to record such findings that the findings returned by the Courts below are result of mis-appreciation of evidence and, as such, the present Regular Second Appeal.

There is no substantial question of law involved in this case and, as such, the present regular second appeal is without any merit and the same stands dismissed.

(SHEKHER DHAWAN)
JUDGE

April 29, 2015
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