

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

RSA No.869 of 2014
Date of decision: 20.01.2015

Chand Ram

...Appellant

Versus

Mahabir Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Harkesh Manuja, 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 the plaintiff was dismissed by the trial court vide judgment and decree dated 20.08.2011. Appeal preferred against the said decree failed and was dismissed on 05.12.2013. This is how, plaintiff 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-Chand Ram, he sought a declaration that he was the owner in cultivating possession of the suit land, measuring 5 kanals 7 marlas, comprised in killa No.87/1 (5-7), situated in the revenue estate of village Kundli. It was averred that the mother of the parties died on 20.08.2002, and their father i.e. Umrao Singh died on 22.01.1995. It was maintained that the parents of the parties

were looked after by the plaintiff in their old age and they used to live with him. As defendants No.1 to 3 were in government service, they used to live separately. And they never served their parents. Defendants No.4 & 5 happened to be the married sisters of the plaintiff and they lived with their families in their respective matrimonial homes. Umrao Singh, father of the parties, during his lifetime and in sound disposing mind executed a will dated 05.01.1995, in favour of the plaintiff to the exclusion of all other heirs. Thus, plaintiff had acquired title qua the suit land and was in possession thereof. Further, plaintiff had produced the original will for registration before the Tehsildar on 26.10.2004, and even got the statements of attesting witnesses of the will recorded on 08.11.2004. Accordingly, their affidavits were also got filed before the Tehsildar. But neither did he register the will nor returned the original will. As plaintiff was the owner in possession of the suit property, interference by defendants in his lawful possession was unwarranted. Defendants were asked to acknowledge the claim of the plaintiff, but to no avail. Thus, the suit.

In defence, it was pleaded, inter alia, by defendants No.1 to 4, that the parents of the parties lived with their sons at their will and were duly looked after by plaintiff as well as the defendants. Though, defendants No.1 to 3 were in government service, but they had a permanent residence in

village Kundli, where their parents used to reside. Umrao Singh, father of the parties, never executed any will qua the suit property during his lifetime. And the alleged will dated 05.01.1995, was fictitious, forged and a result of fraud and misrepresentation, that was practiced by the plaintiff. And he has had an undue influence upon Umrao Singh. Will in question was purported to have been prepared by the plaintiff taking advantage of old age and ill health of his father in the absence of the other sons. In fact, Umrao Singh never intended to deprive defendants No.1 to 3, who also happened to be his sons, from inheritance of his moveable and immoveable properties. Therefore, it was maintained that the plaintiff and defendants succeeded to the estate of Umrao Singh in equal shares and thus, parties were in joint possession as co-sharers. The revenue authorities refused to sanction the mutation of inheritance of Umrao Singh, pursuant to the will dated 05.01.1995, as the same was a forged and fictitious document. Likewise, Sub-Registrar had rightly declined to register the same.

However, defendant No.5, Sukhbiri, in a separate written statement filed by her, admitted the claim of the plaintiff.

The courts below, on a consideration of the matter in issue and evidence on record, found that the plaintiff had placed on record a photocopy of the unregistered will but the

same was exhibited without seeking permission of the court to prove it by way of secondary evidence. Om Parkash Reader (PW1), who tendered the summoned file regarding mutation No.7850, also proved the certified copy of the will. Sahaj Ram (PW2), attesting witness of the will, deposed that Umrao Singh had four sons and two daughters. And that the original will was never submitted before the Tehsildar. Gyanti (PW5) was another attesting witness of the will, she testified in her cross-examination that she got attested the photocopy of Ex.P1 from the Magistrate. It was concluded that plaintiff had even failed to prove the thumb impression, signatures and handwriting of Umrao Singh, as the will in question was purported to have been written by Umrao Singh himself. Further, the will being propounded by the plaintiff was an unregistered document and was surrounded by suspicious circumstances.

As observed by the first appellate court, though the case set out by the plaintiff was that late Umrao Singh had himself written the will dated 05.01.1995 (Ex.P1), but no such pleading in this regard was set out in the plaint. So much so, plaintiff did not even prove the handwriting of deceased Umrao Singh by examining an expert. Further, recitals of the will showed that Umrao Singh had not specifically mentioned as regards his properties in the will dated 05.01.1995 (Ex.P1). Though, plaintiff claimed to be the owner in possession of the suit property i.e. 5 kanals 7 marlas, but the attesting witness

Sahaj Ram (PW2) stated in his cross-examination, that deceased Umrao Singh was owner of only 1½ bighas of land. Not just that, wife of Umrao Singh was very much alive at the time of execution of the will dated 05.01.1995, but nothing was stated in the will as to why, she and the other natural heirs were being deprived of the inheritance of late Umrao Singh. Concededly, Umrao Singh died on 22.01.1995, and the present suit was filed after almost 10 years by the plaintiff on 04.01.2005. And thus, the will propounded by the plaintiff did not see the light of the day almost for a decade. That being so, it was concluded that deceased Umrao Singh had not executed the will dated 05.01.1995 (Ex.P1). Accordingly, the suit and thereafter even the appeal were 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 he has urged is that the defendants in the written statement maintained that the will dated 05.01.1995, was procured by the plaintiff by exercising undue influence and coercion upon the testator, thus, the execution thereof was admitted. And plaintiff was not required to prove that the document in question was indeed recorded in the handwriting of the deceased and was also signed by him. He

further submits that both the attesting witnesses of the will were examined and its execution was proved. 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 wholly devoid of merit and is thus, liable to be dismissed for the reasons that are being recorded hereinafter. Concededly, the suit property i.e. 5 kanals 7 marlas, was owned by the father of the parties to the lis i.e. Umrao Singh. For plaintiff to succeed, he was required to prove that the will dated 05.01.1995 (Ex.P1) was indeed duly and validly executed by late Umrao Singh. Concededly, the will being propounded by the plaintiff was purported to have been written by Umrao Singh himself in his handwriting. However, it was not so averred in the plaint. So much so, plaintiff even failed to examine any expert to compare the handwriting of deceased Umrao Singh with the handwriting in which the alleged will was recorded and to prove that it indeed was a holograph testament of the deceased. Not just that, plaintiff even failed to prove that the will in question bears the signatures of deceased Umrao Singh. Still further, as per the recitals in the will dated 05.01.1995 (Ex.P1), deceased Umrao Singh was stated to be 79 years of age, whereas Sahaj Ram (PW2), an attesting witness, testified in his cross-examination that Umrao Singh died at the age of 70. Likewise, even the

other attesting witness of the will i.e. Gyanti Devi (PW5), deposed in her cross-examination, that at the time of execution of the will, deceased Umrao Singh was 50 years of age. Another aspect, which vitiates the veracity of the purported will is that, at the time of execution of the will, the testator had a living wife, who died after more than seven years of his death. He also had three other sons and two married daughters. Surprisingly, and as it also seems unnatural, there was no reference to any of them in the will. Nothing was mentioned, as to why plaintiff alone was being bequeathed with the suit property, to the exclusion of all other heirs. Concededly, the will in question is an unregistered document. Umrao Singh died 16 days after the execution of the alleged will. As made out from the records, deceased Umrao Singh died on 22.01.1995, and the will being propounded by the plaintiff was brought to light nearly after a decade of his death. In the normal parlance, plaintiff was expected to get the suit property mutated in his name, without any loss of time, after the death of Umrao Singh, but surprisingly he did not. So much so, he did not claim the inheritance of late Umrao Singh on the basis of the will dated 05.01.1995, during the lifetime of his mother or widow of Umrao Singh. In fact, plaintiff remained quiet almost for a period of 2½ years even after the death of his mother.

Defendants in their written statement had

specifically pleaded that will, being propounded by the plaintiff, was a forged and fabricated document and no such will was executed by late Umrao Singh. Therefore, the plea that plaintiff had procured the said will by exercising undue influence or coercion upon him, was only a plea in the alternative. Defendants No.1 to 4 never admitted the execution of the will in question. Needless to assert that will is the most solemn document. And it's always the proponent of the will who has to prove its due and valid execution, as required in law. And also dispel all the suspicious circumstances, the same is surrounded by. Ex facie, plaintiff failed to prove the will in question. Learned counsel for the appellant could not point out as to how the conclusions that have concurrently been recorded by both the courts below were either contrary to the position on record or suffered from any material illegality.

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 20, 2015
Rajan

(Arun Palli)
Judge