

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 1185 of 1987 (O&M)
Date of Decision : 04.08.2016

Amar Singh

....Appellant

Versus

Ram Dhari

....Respondent

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. C.B. Goel, Advocate
for the appellant.

Mr. A.P.S. Sandhu, Advocate
for the respondent

Surinder Gupta, J.

The dispute in this appeal relates to inheritance of land measuring 5 *kanals* 19 *marlas* situated in village Kaul, *Tehsil* Kaithal (now District), District Kurukshetra owned by Smt. Phullo, sister of plaintiff-Ram Dhari and defendant-Amar Singh.

2. In later part of the judgment parties will be referred as 'plaintiff' and 'defendant' as per civil suit.

3. Husband of Smt. Phullo pre-deceased her and she died issueless. While plaintiff-Ram Dhari (respondent) is claiming equal share in the suit land on the basis of natural inheritance, defendant-Amar Singh (appellant) claims suit property on the basis of registered Will dated 19.08.1977 executed by Smt. Phullo.

4. Smt. Phullo owned land in three villages, namely, Mirzapur, Narkatari and Kaul. The dispute pertains to inheritance of her land situated at village Kaul as there is no dispute regarding the inheritance of her land situated in villages Mirzapur and Narkatari on the basis of Will dated

19.08.1977.

5. Learned Sub-Judge, Kaithal upheld the execution of Will and dismissed the suit being not maintainable as plaintiff is not in possession of suit property. Learned Ist Appellate Court, however, held plaintiff to be owner of suit land in equal share with defendant with the observation that Will dated 19.08.1977 does not pertain to property of Smt. Phullo situated at village Kaul. The relevant observations made by learned Ist Appellate Court contained in paras 18 and 19 are reproduced as follows:-

“18. The learned counsel for the appellant had argued that there is no denial of the fact that Smt. Phullo Devi had properties at two places, namely at village Kaul and village Narkatari; that bare perusal of the Will would show that the testator had bequeathed her property situated at village Narkatari in favour of the defendant and that being so the plaintiff was entitled to succeed to her property at village Kaul to the extent of half share whereas the remaining half would be succeeded to by the defendant; that the learned trial Court has at least erred in dismissing the suit of the plaintiff with regard to the property at village Kaul. In order to appreciate this argument I have carefully, closely and consciously examined the Will Ex. D1. It is evident that the testator had bequeathed whole of her property situated in villages Mirzapur and Narkatari, Tehsil Thanesar in favour of the defendant. There is no mention with regard to her property at village Kaul in the Will.

19. Learned counsel for the respondent has drawn my

pointed attention towards the words “APNI SARI JAYDAD” mentioned twice in the Will and wants this Court to read in the Will that the testator had also bequeathed her movable and immovable property situated at village Kaul in favour of the defendant besides her properties at villages Mirzapur and Narkatari. Moreover, he has further brought to my notice the words “SANKSHEP MEIN JO KUCHH JAHAN KAHIN MRITYU KE SAMAY MERE PASS HO” and has vehemently argued that these words also indicate that she intended to include the property at village Kaul also in the Will. I am not inclined to agree with this argument of the learned counsel inter alia for the following reasons:-

- (i) That the parties and Smt. Phullo Devi were residents of village Kaul and that Smt. Phullo Devi had been married at village Narkatari;*
- (ii) that she had properties at villages Kaul, Mirzapur and Narkatari;*
- (iii) vide copy of judgment Ex. D3 and decree sheet Ex. D4, it is evident that Smt. Phullo widow of Tulsi had inherited 136 kanals and 18 marlas of land at village Narkatari from her husband Tulsi on his death in the year 1945 vide mutation no. 44 sanctioned on 11.03.1946. By way of decree dated 02.05.1978 in civil suit 'Sudhir Kumar Vs. Smt.*

Phullan' and Will dated 19.08.1977 she transferred the suit land in favour of Sudhir Kumar, Baldhir Singh and Jalbir Singh sons of Amar Singh, the present defendant. One Singh Ram claiming that after the death of Tulsi Smt. Phullo had started living with him and he had served her and, therefore, on being pleased with him had promised to transfer her land and movable and immovable property in his favour, filed a suit for declaration that judgment and decree dated 02.05.1978 was collusive and that the Will dated 19.08.1977 was also invalid. Said judgment and decree-sheet Ex. D4 shows that the suit of the plaintiff was dismissed."

6. To cut short the argument, both the counsel for parties have argued that perusal of Will will make it clear as to whether it relates to property of Smt. Phullo situated at village Kaul or vide this Will she had bequeathed her property situated in villages Mirzapur and Narkatari only in favour of her brother Amar Singh.

7. On perusal of Will, while learned counsel for the appellant has argued that vide this Will Smt. Phullo bequeathed her entire property situated anywhere to Amar Singh; learned counsel for respondent has argued that vide this Will Smt. Phullo intended to bequeath her property situated in villages Mirzapur and Narkatari only and whatever reference is made in this Will regarding her entire land that should be with regard to property situated in villages Mirzapur and Narkatari. In case she had to

bequeath her property situated in village Kaul to the beneficiary under the Will, she would have made specific reference to this effect in the Will. He has further argued that Smt. Phullo had inherited the suit property from her parental side. She had given her entire property, which she inherited from her husband, to sons of Amar Singh and Amar Singh himself but left her parental property to be inherited by her heirs of parental side without making any reference of same in the Will.

8. In order to understand intention of Smt. Phullo, it will be relevant to have a look on recitals in the Will, which is in Hindi and English translation of which is as follows:-

“I am Phullo Devi widow of Tulsi son of Jwahra, Caste Ror, resident of village Narkatari, *Tehsil* Thanesar, District Kurukshetra.

I am aged about 65 years and is having a cheerful health. I have no issue. Amar Singh son of Rughunath son of Buta resident of village Kaul, *Tehsil* Kaithal is my real brother. He is of a great help to me and also serves me. I have great affection for him. **I want to bequeath my entire property to him.** Now I am in sound mind and execute the Will that till I am alive, I will remain owner of my entire property. After my death, my land situated in villages Mirzapur and Narkatari, *Tehsil* Thanesar, entire property, house etc. in village Narkatari, *Tehsil* Thanesar, household goods, cash, in short **whatever I own anywhere at the time of my death, Amar Singh son of Rughunath son of Buta, resident of village Kaul, *Tehsil* Kaithal, my real brother shall be owner of my entire**

movable and immovable property and inherit the same.

After my death, Amar Singh should show this Will to revenue officer and get the mutation of land inherited by him sanctioned in his name.”

9. Execution of Will dated 19.08.1977 by Smt. Phullo is not in dispute. Substantial question of law which arises in this appeal relate to interpretation of Will and to find whether Smt. Phullo had bequeathed her land situated in village Kaul to defendant-Amar Singh or the Will pertains to her property situated in villages Mirzapur and Narkatari only and findings of Ist Appellate Court in paras 18 and 19 reproduced above, are based on misreading of evidence?

10. A bare perusal of the Will reproduced above will show that Smt. Phullo wanted to bequeath her entire property to her brother Amar Singh. She made reference to some land/property situated in villages Mirzapur and Narkatari and in the end concluded that her entire movable and immovable property situated anywhere, will be inherited by Amar Singh. This clinches the whole issue that the Will executed by Smt. Phullo was confined to her property situated in villages Mirzapur and Narkatari only. In case she had to leave the property situated at village Kaul to be inherited by all her legal heirs by natural succession, she would have made specific reference to this effect in the Will. To draw inference regarding intention of the testator, wording of the Will is only guiding factor and the Court cannot travel beyond that to infer anything. As is evident, Smt. Phullo owned substantial land/property in villages Mirzapur and Narkatari, so she made reference regarding the above property but at the same time made it clear that she is executing the Will regarding her entire property situated

anywhere and owned by her at the time of her death. The conclusion drawn by Ist Appellate Court in paras 18 and 19 mentioned above are based on misreading of evidence, perverse and are reversed. There is nothing in the Will to infer that Smt. Phullo intended to keep the property inherited from parental side out of domain of her Will to facilitate natural succession. Inference to this effect drawn by Ist Appellate Court are based on figment of imagination and are not based on true interpretation of intention of testator, which is reflected from recital in the Will.

11. In regular second appeal, this Court usually evade interfering in finding of fact recorded by courts below until and unless the same are perverse, against fact or based on misreading of evidence. In case **Hero Vinoth (minor) vs. Seshammal, 2006 (5) SCC 545**, Apex Court while drawing exception to general rule that High Court will not interfere with findings of the Courts below observed as follows:-

“25. The principles relating to Section 100 CPC, relevant for this case, may be summarized thus:-

(i) xx xx xx xx xx

(ii) xx xx xx xx xx

(iii) The general rule is that High Court will not interfere with concurrent findings of the Courts below. But it is not an absolute rule. Some of the well recognized exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to 'decision based on no evidence', it not only refers to

cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding.”

12. As a sequel of my discussion above, substantial question of law is answered in favour of appellant. The appeal is accepted. Judgment and decree passed by Ist Appellate Court is set aside and the suit of plaintiff is ordered to be dismissed.

August 04, 2016
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No