

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

RSA No.1662 of 1987
Date of decision : 26.10.2016

Chander Parkash and another

...Appellants

Versus

Guru Maharaj Anandpur Ashram Trust and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Kanwaljit Singh, Sr. Advocate with
Mr. Amandeep Singh Meho, Advocate for appellants.

Mr. R.K. Gautam, Advocate for the respondent(s).

AMIT RAWAL, J. (Oral)

The appellants-plaintiffs are aggrieved of the concurrent findings of fact, whereby following claim in the suit has been declined by the Courts below:-

“That the plaintiff prays that he should be awarded a decree for declaration against defendants to the effect that the plaintiff is exclusive owner of agricultural land and site No.181 and plot No.207, situated in Dhankot, left by Smt. Jamna Bai as mentioned in para no.1 of the plaint, situated in Mauza, Dhankot, Tehsil and Distt. Gurgaon and that the defendants have no right, title or interest in the lands and the Will dated 22.07.1977 is illegal, void, fictitious, bogus and is not binding upon the plaintiff and the same is product of forgery and that Smt. Jamna Bai did not execute a Will and the same could not be executed

underlaw by her as she was only a limited owner and a decree for permanent injunction restraining the defendants Nos.1 and 2 from interfering in the possession of the plaintiff over the land measuring 36 kanals 4 marlas, and from realising the rent from defendants No.3 to 5 in respect of land measuring 133 kanals 11 marlas as mentioned in the pattanama executed by Smt. Jamna Bai in favour of the defendants No.3 to 5 which amount plaintiff alone is entitled to recover, the costs of the suit may also be awarded in favour of plaintiff and against the defendants.

In case the defendants Nos.1 and 2 succeed in obtaining the possession of the suit property during the pendency of the suit then a decree may also be passed against them and in favour of the plaintiff.”

Suit aforementioned was based upon the premise that Jamna Bai grandmother of the appellants-plaintiffs, as per the Will dated 05.01.1919 executed by Lekhu Ram was given limited estate in the land, in fact during her lifetime and thereafter properties were to revert to the children. The Will, aforementioned, had not been proved in accordance with law and was marked as Mark-A as it was in torn condition. The trial Court had admitted the Will in evidence by taking the aid of provision of Section 90 of the Indian Evidence Act.

Mr. Kanwaljit Singh, learned Senior Counsel assisted by Mr. Amandeep Singh Meho, learned counsel appearing on behalf of the appellants-plaintiffs, submits that in view of the provision of Sub-Section 2 of Section 14(2) of the Hindu Succession Act, 1956, Jamna Bai was not absolute owner and, therefore, the Will dated 22.07.1977 (Subsequent One)

executed by her, bequeathing her entire estate in favour of defendant was not a valid one. Property was required to be reverted back to the children. No doubt, the Will aforementioned was registered and the defendants have proved the same through the examination of the attesting witnesses and as well as scribe but in view of embargo under Sub-Section 2, execution of the Will was insignificant. In support of his contention, he has relied upon the ratio decidendi culled out by Hon'ble Supreme Court in *V. Tulsamma Vs. V. Sessa Reddy*, 1977(3) SCC 99.

He further submits that before the lower Appellate Court, an application for bringing on record the following documents namely Will dated 05.01.1920 executed by Lekhu Ram in favour of Kishan Chand his grandson at Pakistan, Jamabandi and mutation were also sought to be placed on record to establish that in case Will dated 05.01.1919 is to be ignored, property was devolve upon grand children i.e. the children of Kishan Chand, therefore, Jamna Bai could not be assume herself the character of absolute ownership. Lower Appellate Court has also not assigned any reasons with regard to the genuinity and validity of the Will dated 22.07.1977 being last Court of fact and law. Had all these factors be taken into consideration, perhaps suit would have been decreed, therefore, there is gross illegality and perversity and thus urges this Court for setting aside the findings under challenge by decreeing the suit.

In present appeal also, miscellaneous application bearing No.9632-C of 2016 has also been moved to bring on record registered Will dated 15.01.1920, certificate to the extent that Chak Alidah and Alidah are the same and Mutation and jamabandies to demonstrate that half share in the

property owned by Lekhu Ram was bequeathed in favour of Kishan Chand-appellant-plaintiff (since deceased).

Per Contra, Mr. R.K. Gautam, learned counsel appearing on behalf of respondents submits that judgment rendered by Hon'ble Supreme Court in *Tulsamma's case (Supra)*, has been re-visited by Hon'ble Supreme Court in *Jupudy Pardha Sarathy Vs. Pentapati Rama Krishna and others, 2016(1) RCR (Civil) 1*, wherein it has been held that in case husband executed the Will in favour of the wife to the effect that she would enjoy the property during her lifetime and thereafter the property would devolved upon children, children would not be able to draw the benefit of provision of Sub-Section 2 of Section 14 of the Act owing to absolute ownership of the widow and, therefore, she was competent to execute the Will by bequeathing the property in favour of the defendants and rightly so, registered Will dated 22.07.1977 had been executed, which has been proved through the testimony of the attesting witnesses and as well as scribe. All the witnesses have been coherent and consistent and despite their extensive cross-examination, nothing contrary surfaced. There is compliance of provision of Section 68 of the Indian Evidence Act, much less, provision of Section 63 (c) of the Indian Succession Act and thus urges this Court for affirming the findings under challenge.

I have heard learned counsel for the parties and appraised the paper book and of the view that documents, aforementioned, sought to be placed on record by way of additional evidence would relate to the facts of the case as suit was based upon challenge to the Will dated 22.07.1977 and as well as claiming reversionary right on the demise of Jamna Bai as per the

contents of the Will dated 05.01.1919 Mark-A. Since the plaintiff has relied upon the Will dated 05.01.1919 drawing the presumption, for the time being though not having been proved, but the fact remains that as per the dictum laid down in *V. Tulsamma's case (Supra)*, even if the widow has been given the limited estate during her lifetime, with rider, that property would revert back to the other legal heirs on her demise and in case she alienates the property during her lifetime, whether it would be absolute ownership or not, answer is in Positive, as she would be the absolute owner, thus, in my view, there is no force in the merit and arguments of Mr. Kanwaljit Singh, vis-a-vis drawing the presumption under Section 90 of the aforementioned Will would be meaningless. As regards the contention that the lower Appellate Court has abrogated in not rendering any findings upon the genuinity and admissibility of the registered Will dated 22.07.1977, I am of the view that on going through the para Nos.6 and 7 of the impugned judgment and decree, the point only urged before the lower Appellate Court is with regard to the provision of Section 14 of the Hindu Succession Act, and as well as additional evidence, in essence, on going through the grounds of appeal, there is no challenge to the aforementioned findings. The observation of the Court as per the ratio decidendi culled out by Hon'ble Supreme Court in *State of Maharashtra Vs. Ramdas Shrinivas Nayak and another, AIR 1982 SC 1249* are no longer res integra, if the Judge say in their judgment that something was done, said or admitted before them, there has to be last word on the subject until and unless, is called upon to correct the same supported by an affidavit for the purpose of resiling from the alleged concession. No such effort has been made by the appellant, therefore, arguments of Mr.

Kanwaljit Singh on this premise is hereby repelled.

On the contrary, defendants have been able to prove execution and admissibility of the registered Will dated 22.07.1977 by examination of the attesting witnesses and as well as scribe who deposed in terms of the provisions as noticed above. Since she was absolute owner, she would bequeath the property in any manners wanted to during her lifetime. On perusing of the documents aforementioned, the additional evidence would pales into insignificance as suit is not based upon the registered Will dated 15.01.1920. Evidence sought to be placed on record, thus, would be beyond the pleadings, therefore, application for additional evidence is nothing but an attempt to confuse the matter, much less, to complicate the matter. In the absence of any pleadings, application is thus hereby rejected. Concurrent findings would leads irresistible conclusion that the appellant has miserably failed to prove the case and, therefore, the findings rendered by the Courts below is perfect, legal and justified and is based upon preponderance of the evidence.

No ground for interference is made out.

Accordingly, appeal is dismissed.

26.10.2016

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No