

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

**(1) Regular Second Appeal No.846 of 1988
Pronounced on : 08th January, 2016**

Rajinder Lal (since deceased) through his LRs
.....Appellant
Versus

Smt. Prem Mohni & others
....Respondents

(2) Regular Second Appeal No.1883 of 1988

Smt. Prem Mohni
.....Appellant
Versus

Rajinder Lal (since deceased) through his LRs & others
....Respondents

CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA

Present: Mr. Anish Setia, Advocate with
Mr. Surinder Singh, Advocate for the appellant
(in RSA No.846 of 1988) and
respondent No.1 (in RSA No.1883 of 1988).

Mr. Arun Jain, Sr. Advocate with
Mr. Deepak Basatia, Advocate
for respondents No.2 to 4 in both appeals.

RAJIVE BHALLA, J

By way of this order, two appeals, that require
answers to the same questions of law shall be decided.

The appellants challenge judgments and decrees
dated 16.04.1986 and 19.10.1987, passed by the Additional
Senior Sub Judge, Amritsar and the Additional District Judge,
Amritsar, respectively.

Rajinder Lal, the appellant, in RSA No.846 of

1988, filed a suit for separate possession, by partition of house No.1079/XI, situated in Kucha Acharaja, Amritsar, arraying his sister Smt.Prem Mohni (respondent No.1 in RSA No.846 of 1988 and the appellant in RSA No.1883 of 1988), Prem Parkash, Gian Chand, Daya Ram his brothers as defendants (respondents No.2 to 4 in both appeals) and Ramesh Kumar, M/s Kapur Textiles and M/s Dena Bank, tenants in possession of separate parts of the premises. Rajinder Lal, the appellant, relied upon a sale certificate dated 27.05.1975, issued by the Managing Officer, Rehabilitation Department, in his and in favour of Smt. Prem Mohni to the exclusion of respondents No.2 to 4. The appellant also prayed that Prem Mohni, respondent No.1 should be directed to render accounts.

After notice, the tenants were proceeded against ex-parte but the other respondents namely Prem Mohni, and respondents No.2 to 4, filed a written statement, raising preliminary objections, regarding valuation of the suit and non-joinder of necessary parties. The respondents also raised a plea that the appellant was not in possession of any part of the property and pleaded that the property belonged to their father Ram Narain, who was a displaced person. Ram Narain was allowed to purchase the property in dispute by the Managing Officer on 31.01.1963, for Rs.8412/-, payable in six

instalments. Ram Narain paid five instalments, during his lifetime but the sixth instalment was paid by Gian Chand (respondent No.3), on 05.12.1968, after the death of Ram Narain. The respondents also pleaded that Will, dated 31.10.1967, set up by the appellant is illegal and, therefore, the Managing Officer could not transfer the property in favour of the appellant and Prem Mohni, on the basis of the Will. The Will is in fact a letter addressed to the Managing Officer and, therefore, cannot be treated as a Will. The respondents denied that affidavits had been filed by Prem Parkash, Daya Ram and Smt. Sarla Rani accepting the Will and also pleaded that statements made before the Managing Officer have no value. The plaintiff filed a replication denying averments in the written statement but reiterating averments in the plaint. On the pleadings of the parties, the trial Court framed the following issues:-

- “1. Whether the suit is properly valued for purpose of court fee and jurisdiction? OPP.*
- 2. Whether plaintiff has locus standi to file the suit? OPP.*
- 3. Whether the property in suit belonged to Ram Narain deceased? OPD.*
- 4. Whether plaintiff is the sole owner of the property in dispute? OPP.*
- 5. Whether the sale certificate in favour of the plaintiff and defendant No.1 was issued by the Rehabilitation Department in collusion with the*

plaintiff as given in paras No.3 and 4 and 5 of the preliminary objection of the W.S.? OPD.

6. *Whether the decision, dated 7.9.80 of the D.R.M.O. was a valid document? OPD.*
7. *Whether Harkishan Lal and Sarla Kumari are necessary parties? OPD.*
8. *Whether the suit against Gian Chand, Prem Parkash and Daya Kishan is not competent? OPD.*
9. *Whether the suit is within time? OPP.*
10. *Whether the suit is bad for mis-joinder of parties and cause of action? OPD.*
11. *Whether Ram Parkash, Daya Ram, Smt. Prem Mohni are estopped by their acts and conduct from making objection to the Will of Sh.Ram Narain and the title of the plaintiff and Prem Mohni and from claiming any interest in the property? OPD.*
12. *Whether the order dated 7.9.80 of the Managing Officer is liable to be challenged and questioned in the present proceedings? OPD.*
13. *Whether the grant of conveyance deed by D.M.R.O. In favour of the plaintiff and defendant No.1 can not be challenged in civil court? OPP.*
14. *Whether the plaintiff is not entitled to partition of ½ share in the property? OPD.*
15. *Whether the plaintiff is entitled to account for income and profits as prayed from the defendant No.1?*
16. *Relief.”*

After considering the evidence on record, the trial

Court decreed the suit for possession of 5/14th share by way

of partition and also decreed the suit for rendition of accounts against Prem Mohni. The trial Court held that though the Will has not been proved but as Prem Parkash, Daya Ram and Sarla Rani (who was not impleaded as a party) had filed affidavits before the Managing Officer accepting the Will, they have relinquished their rights in the property in dispute. The trial court also held that the order passed by the Managing Officer is binding upon the parties, who filed affidavits. The trial Court also held that Prem Mohni shall render accounts to the parties.

Aggrieved by this judgment and decree, the respondents filed an appeal. Rajinder Lal, though successful, filed a separate appeal challenging the findings rejecting the Will.

The first appellate Court allowed the appeal filed by the respondents and dismissed the appeal filed by Rajinder Lal affirming the finding that as the Will has not been proved and held that the affidavits cannot be construed as a relinquishment of rights. The first appellate Court thus set aside the judgment and decree passed by the trial Court and held that Rajinder Lal is owner to the extent of 1/7th share, being one of the seven children of Ram Narain, deceased. The first appellate Court, however, affirmed the decree for rendition of accounts.

Counsel for the appellants submit that the impugned judgments and decrees rejecting the Will are perverse and arbitrary. The Will Ex.PW9/1 has been proved by adducing a copy of the Will from the office of the Managing Officer and by the deposition of an attesting witness. The suspicious circumstances pointed out by the Courts below are neither suspicious nor sufficient to discard the Will. The testator forwarded a letter to the Managing Officer of the Rehabilitation Department, in the form of a Will, duly attested by witnesses, setting out the disposition of the property in dispute. In the absence of any circumstance namely undue influence, forgery or any other suspicious circumstance etc., the Courts below have erred in rejecting the Will. The findings that the original Will has not been produced or the copy which was prepared by placing a carbon paper bears signatures in ink, are irrelevant as PW9, an attesting witness has admitted his signatures and proved the execution of the Will. The first appellate Court has wrongly held that affidavits Ex.PW11/14 to Ex.PW11/16, filed by Prem Parkash, Sarla Rani and Daya Ram have not been proved. A perusal of the record as well as judgment recorded by the trial Court reveals that Prem Parkash, Sarla Rani and Daya Ram did not step into the witness box, to deny their signatures on the affidavits. Therefore, there was no need for the appellant to prove the

execution of these affidavits by Prem Parkash, Sarla Rani and Daya Ram.

Counsel for the appellant further submits that the Managing Officer accepted the affidavits filed by Prem Parkash, Sarla Rani and Daya Ram, admitting the validity of the Will and relinquishing their rights in the disputed property and passed an order affirming the legality of the Will and transferring the property to Rajinder Lal and Prem Mohni. As Prem Parkash, Sarla Rani and Daya Ram accepted the Will, and did not come forward to deny their affidavits, even if the Will is not proved the affidavits inhere a relinquishment of rights, as rightly held by the trial Court. The first appellate Court has wrongly held that the affidavits have not been proved and that succession to the estate of Ram Narain would open by natural succession.

Counsel for the appellant also contends that Sections 27 and 36 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (hereinafter referred to as "the Act"), prohibit a Civil Court, from entertaining challenge to orders passed under the Act. The first appellate Court and the trial Court had no jurisdiction to hold that the order passed by the Managing Officer is not binding. Counsel for the appellant relies upon the judgment of the Delhi High Court in the case of **Sohan Lal Jain through his LRs Vs. Union of**

India & ors., 2009 (1) AD (Delhi) 102.

Counsel for the appellant submits that the following substantial question of law arises for adjudication:-

1. Whether in view of the bar created by Section 27 and 36 of the Displaced Person (Compensation and Rehabilitation) Act, 1954, a Civil Court has jurisdiction to cancel a sale certificate issued by the Rehabilitation Department under the Displaced Person Act, 1954?
2. Whether admission by a defendant of the execution of a Will, in proceedings before a Managing Officer, exercising power under the Displaced Persons Act estops them from inheriting any right in the estate of the testator, even if the Will is discarded by a Civil Court?

Counsel for respondents No.2 to 4, on the other hand, submits that concurrent findings of fact recorded by Courts below that the Will has not been proved, do not call for interference. A perusal of the record reveals that the Will is in the shape of a letter. The alleged Will was admittedly written in pencil and three copies were prepared, by placing a carbon paper under the original. The original Will which was said to have been forwarded to Managing Officer, has not been produced. The alleged Will Ex.PW9/1 produced before the trial Court is a copy and though a carbon copy, bears signatures in ink. The testator had no reason to disown his sons and a daughter who were unmarried, thereby casting a

serious doubt on the Will.

Counsel for respondent No.2 to 4 further submits that the question is not whether Prem Parkash, Sarla Rani and Daya Ram have not come forward to deny their affidavits but whether the appellant has proved the Will. The appellant having failed to prove the Will, the affidavits admitting the Will, are irrelevant. The doctrine of estoppel or relinquishment could have applied only if the appellant had proved the Will. This apart, affidavits record a relinquishment on account of the Will and as the appellant has failed to prove the Will, there is no question of relinquishment. The first appellate Court has rightly held that the principle of estoppel enshrined in Section 115 of the Indian Evidence Act, 1872 does not apply as the Will is doubtful, thereby requiring inheritance to open by natural succession.

I have heard counsel for the parties, perused the impugned judgment and pleadings and the evidence.

The dispute in the present case, pertains to ownership of property No.1079/XI, situated in Kucha Acharaja, Amritsar. The appellant relies upon a Will dated 31.10.1967 and an order dated 07.09.1970, passed by the Managing Officer in favour of the appellant and respondent No.1 whereas respondents No.1 to 4 plead natural succession.

The property in dispute, was allotted to Ram Narain, father of the parties, a displaced person from Pakistan, for Rs.8,412/- on 31.01.1963. Ram Narain passed away on 01.09.1968 leaving behind Rajinder Lal, the appellant, Prem Mohni-respondent No.1, Prem Parkash-respondent No.2, Gian Chand-respondent No.3, Daya Ram-respondent No.4, Hari Kishan Lal and Sarla Rani, the later two were not impleaded as defendants.

Before his death, Ram Narain is alleged to have executed a Will and forwarded it to the Managing Officer setting out disposition of the property in dispute in favour of Rajinder Lal and Prem Mohni. The Managing Officer, vide order dated 07.09.1970, transferred the property in the names of Rajinder Lal and Prem Mohni by relying upon the Will and affidavits filed by Prem Parkash-respondent No.2 Daya Ram-respondent No.4 and Sarla Rani (not impleaded as a party), deposing therein that they accept the Will.

Admittedly, during his lifetime, Ram Narain had paid only five instalments whereas the other instalments were paid after his death. The trial Court has, after considering the pleadings and the evidence held that as on the date of his death, Ram Narain had not paid all the instalments, he was not owner of the property in dispute and, therefore, could not execute a valid Will but thereafter proceeded to examine the

alleged Will Ex.PW9/1. The Will was sought to be proved by summoning the record from the Rehabilitation Department and by examining Kishori Lal PW9, an attesting witness. Kishori Lal deposed that the Will was scribed in the house of Ram Narain in 1979, though Ram Narain had passed away on 01.09.1968. The year may be an error in the deposition.

The trial Court has while discarding the Will, recorded that the so called Will Ex.PW9/1 is in the shape of a letter addressed to the District Rent-cum-Managing Officer, Model Town, Jalandhar, asking the authority to transfer ownership of the property in favour of the appellant and Prem Mohni. The trial Court also recorded that the alleged Will was written in pencil and three copies were, prepared by placing carbon papers beneath the original but the record summoned from office of the Managing Officer reveals that Ex.PW9/1 is a carbon copy and not the original. Apart from this fact, the trial Court also held though it is claimed that the Will was written in pencil the copy Ex.PW9/1 bears signatures in ink. The trial Court concluded that if three copies were prepared by placing a carbon paper under the original, the signatures of witnesses would not be appended in ink on the copies. The trial Court also noticed that signatures of the witnesses appear on the extreme corners of the alleged Will and the date and the signatures appears to have been inserted later.

The trial Court also recorded that though the case of the appellant is that the first copy of the Will was sent by the testator by registered post to the District Rent-cum-Managing Officer, Jalandhar but the appellant has not been able to produce the original. The trial Court pointed out suspicious circumstances namely no reference to the other children who were unmarried etc. and held that the Will is a suspicious document and rejected the Will.

The plea that Prem Parkash, Daya Ram and Sarla Rani had filed affidavits Ex.PW11/14, PW11/15 and PW11/16, before the Managing Officer, accepting the Will was considered by the trial Court which held that though these documents were admitted into evidence in the statement of the appellant, subject to objection, but as Prem Parkash, Daya Ram and Sarla Rani have not stepped into the witness box, to deny therein signatures and affidavits stand proved. The trial Court then went on to hold that as the affidavits record a relinquishment of rights in the suit property, the Managing Officer was justified in issuing a sale certificate in favour of the appellant and Prem Mohini, to the extent of 5/14th share each and in favour of Gian Chand and Hari Kishan Lal to the extent of 1/7th share each. The trial Court thus declared the appellant owner of 5/14th share. The plea that jurisdiction of Civil Courts is barred under Section 27 of the Act, was

rejected by holding that Civil Courts are not barred from examining the legality of a question of title. The trial Court decreed the suit for rendition of accounts by Prem Mohni and directed drawing up of a preliminary decree.

Aggrieved by this judgment and decree, the appellant and respondents No.2 to 4 filed separate appeals. The appeals filed by respondents No.2 to 4 were allowed by the Additional District Judge, Amritsar, whereas the appeal filed by the appellant was dismissed. The first appellate Court affirmed the finding that the Will is a suspicious document but reversed the finding that affidavits Ex.PW11/14, PW11/15 and PW11/16, have been proved or are binding upon the respondents by holding that mere identity of the signatures does not prove the contents of a document without any independent corroboration and even otherwise as it appears that the affidavits were made under an erroneous belief that their father had executed a Will in favour of the appellant and Prem Mohni, the affidavits do not operate as estoppel or can be read as relinquishment of their rights, as the Will has not been proved. The first appellate Court declared the appellant and respondents owner to the extent of 1/7th share each but affirmed the decree for rendition of accounts against Prem Mohni.

The first substantial question of law is whether

Sections 27 and 36 of the Act prohibit a Civil Court from opining as to the legality of a sale certificate issued by the Rehabilitation Department under the Act?

An answer to this question lies in the powers, conferred by the Displaced Persons (Compensation and Rehabilitation) Act, 1954. A perusal of the statute reveals that powers are conferred upon the Central Government and other officers to deal with evacuee property namely to decide/verify claims of displaced persons, allot, lands etc. but does not by reference, to any provision in the Act confer a power to decide a binding question of title. The authorities exercising power under the Act are officers/Tribunals of limited jurisdiction conferred with power to decide questions that fall to their jurisdiction and may as a result of these powers decide a question of title but not as an opinion, binding upon a Civil Court. Section 27 of the Act assigns finality to orders passed by authorities under the Act and Section 36 prohibits a Civil Court from entertaining any suit, proceedings in respect of any matter which the Central Government or any officer or authority appointed under this Act is empowered by or under this Act to determine. The Act, however, does not whether by any specific provision or by intent confer any power on the Central Government or any officer or authority appointed under the Act to determine, as a binding opinion, a question

of title. In the absence of any provision in the statute conferring power to decide a binding question of title, an order passed by an officer, would bind a Civil Court or oust the jurisdiction of a Civil Court considering a question of title. The learned Courts below have, therefore, rightly held that jurisdiction of a Civil Court is not barred. The first substantial question of law is answered against the appellant in the above terms.

The second substantial question of law relates to the alleged admissions contained in affidavits Ex.PW11/14, PW11/16 and PW11/15 filed by Prem Parkash, Daya Ram and Sarla Rani before the Managing Officer, accepting the correctness of the alleged Will and deposing therein that they have no objection if the property is transferred in the name of the appellant and Smt.Prem Mohini. The trial Court has held that these affidavits can be read against these respondents as they did not step into the witness box to deny their signatures and then held that they have relinquished their rights in the property. The first appellate Court, has after considering the affidavits and the evidence on record, held as follows:-

“12. I have given my thoughtful consideration to the arguments advanced by the counsel for the parties and have gone through the record very carefully. The first point which is to be determined in this regard is whether the plaintiff had

relinquished their right in the property and they are estopped by their act and conduct. The plaintiff had placed on record the affidavits of Prem Parkash Ex.PW11/14, of Daya Ram PW11/16 and that of Sarla Rani Ex.PW11/15, respectively. The execution of these documents has not been proved on the record. The officer who has attested these documents had not been produced nor the person who had identified the deponent had come into the witness box to prove the execution of these affidavits. The plaintiff himself has appeared in the Court and stated that Prem Parkash, Daya Ram and Sarla Rani had tendered their affidavits Ex.PW11/14, Ex.PW11/15 and Ex.PW11/16 before the D.R.M.O. Rehabilitation Department and he identified the signatures of the deponents and he had seen them signing and writing not no reliance can be placed. Mere proof of identify the signature is not sufficient to prove on AIR 1981 S.C. page 2085: Ramji Daya Wala & Sons Vs. Invest. Improvement wherein their Lordships held as under:

“Undoubtedly, mere proof of the hand writing of a document would not tantamount to proof of all the contents or the facts stated in the document, if the truth of the facts stated in a document is in issue mere proof of the handwriting and execution of the document would not furnish evidence of the truth of the facts or contents of the document. The truth or otherwise of the facts or contents so stated would have to be proved by admissible evidence i.e. by the evidence of those persons who can vouch safe for the truth of the facts in issue.”

Plaintiff is interested witness because deponents had relinquished their rights in his favour. There is no independent corroboration to the statement of the plaintiff and there is no other evidence except the sole statement of the plaintiff Rajinder Lal. Even otherwise if it is presumed for arguments sake that these affidavits have been duly proved then they were made under erroneous belief that their father had executed the will in favour of defendant No.1 and the plaintiff. In the affidavits Ex.PW11/15 and Ex.PW11/16 it

has been mentioned that the according to the will and wishes of their late father they do not claim any right or interest in the said property hence they relinquish the same, if any, in favour of their brother and sister. If the admission has been made under erroneous belief then there is no estoppel. I draw support in this regard from AIR 1959 S.C. page 135 The Sales Tax Officer Banaras and others Vs. Kanhaiya Lal Makund Lal Saraf, wherein their Lordships of the Supreme Court have held as under:

“Whether the principle of estoppel applies or there are circumstances attendant upon the transaction which disentitle the respondent to recover back the monies, depends upon the facts and circumstances of each case. No question of estoppel can ever arise where both the parties, as in the present case, are labouring under the mistake of law and one party is not more to blame than the other. Estoppel arises only when the plaintiff by his acts or conduct makes a representation to the defendant of a certain state of facts which is acted upon by the defendant to his detriment it is only then that the plaintiff is estopped from setting up a different state of facts. Even if this position can be availed of where the representation is in regard to a position in law, no such occasion arises when the mistake of law is common to both the parties. The other circumstances would be such as would entitle a court of equity to refuse the relief claimed by the plaintiff because on the facts and circumstances of the case it would be inequitable for the court to award the relief to the plaintiff. These are, however, equitable considerations and could scarcely be imported when there is a clear and unambiguous provision of law which entitles the plaintiff to the relief claimed by him.”

Reliance can also be placed on AIR 1965 Supreme Court 1812 R.S.Maddanappa (deceased) after him by his legal representatives

Vs. Chandramma and another : wherein it was held by their lordships of the Supreme Court that:

“The law of estoppel by representation is confined to the provisions of Sec. 115 and apart from the provisions of this Section there is nothing like what is called “equitable estoppel” evolved by the English Judges. The provisions of Section 115 are in a sense a rule of evidence. They are founded upon the well known doctrine laid in (1837) Ad and El 469. The object of estoppel is to prevent fraud and secure justice between the parties by promotion of honesty and good faith. Consequently where one person makes a misrepresentation to the other about a fact he would not be shunt out by the rule of estoppel if that other person knew the true state of facts and must consequently not have been misled by the misrepresentation.

Further, the person setting up an estoppel against another must show that his position was altered by reason of the representation or conduct of the latter, otherwise even the general principle of estoppel cannot be invoked by him.”

12. In view of my above discussion, the defendants No.1 to 4 are not estopped by their act and conduct from claiming the property in dispute.”

A perusal of the aforesaid findings reveals that the first appellate Court has in essence held that mere proof of signatures does not prove the contents of a document. The first appellate Court has also held after referring to the doctrine of estoppel, Section 115 of the Evidence Act and to certain precedents that even if the affidavits are accepted, the representation made by the appellant with respect to the Will,

being incorrect, any admission made by Prem Parkash, Daya Ram and Sarla Rani, on the basis of incorrect facts, does not operate as estoppel against them.

The finding, so recorded, in my considered opinion, is valid and does not suffer from any error of law or of fact. Apart from the fact that the affidavits were merely tendered into evidence without proof of their execution, and the concerned respondents did not step into the witness box to deny their signatures or the contents of their affidavits, the first appellate Court has rightly held that the question of estoppel and relinquishment would not arise as the representation made to the respondents about a validly executed Will, has been found to be incorrect. The law of estoppel, as contained in Section 115 of Code of Civil Procedure, is a rule of evidence and for an inference of estoppel or relinquishment to arise, the representation, must be proved to be true. If the representation is found to be incorrect or is not proved i.e. is based upon a set of facts or state of affairs, that is found to be incorrect or are a misrepresentation, the person alleging estoppel or relinquishment, would not be entitled to invoke the principle of estoppel or relinquishment. The affidavits were based upon the premise that the Will is legal and valid. Both the trial Court as well as the first appellate Court have held that

Ex.PW9/1, is not a validly executed Will. The admissions made in affidavits Ex.PW11/14 and PW11/16, therefore, cannot be pressed into service either on the ground of estoppel or on the ground of relinquishment as they were based upon a representation that their father had executed a valid Will, a representation that has been found to be incorrect.

Consequently, the second substantial question of law is also answered against the appellant and in favour of the respondents in the above terms. The appeals are accordingly dismissed, with no order as to costs.

[RAJIVE BHALLA]
JUDGE

08th January, 2016
Vinay