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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 11.05.2016

1. RSA-3938-1998 (O&M)

Arjan Singh
Versus ... Appellant

Harjot Singh and others
... Respondents

2. RSA-331-1999 (O&M)

Harjot Singh and others
Versus ... Appellants

Arjan Singh and others
... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Animesh Sharma, Advocate
for the appellant(s) (in RSA-3938-1998) and
for the respondent(s) (in RSA-331-1999).

Mr. R.N. Moudgil, Advocate
for the appellant(s) (in RSA-331-1999) and
for the respondent(s) (in RSA-3938-1998).

1. Whether reporters of 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?

AMIT RAWAL, J. (ORAL)

This order of mine shall dispose of two appeals bearing RSA
No.3938 of 1998 titled as “Arjan Singh V/s Harjot Singh and others” filed
at the instance of appellant-defendant No.1 and RSA No.331 of 1999 titled
as “Harjot Singh and others V/s Arjan Singh and others” filed at the

instance of the plaintiff qua the findings rendered by the Courts below with regard to the cancellation of the registered revocation deed dated 16.02.1987 vide which the Will dated 29.07.1985 of Vidhyawati was allegedly revoked.

Mr. Animesh Sharma, learned counsel appearing on behalf of the appellant(s) submits that the respondent(s)-plaintiff(s) instituted a suit seeking declaration that they are owner in possession of the house, in dispute, situated in Mohalla Ucha Khera, Ropar shown in the site plan and also sought possession of the land measuring 30 kanals 12 marlas situated in Village Harnam Nagar, Tehsil Fatehgarh Sahib, District Patiala, on the premise that Vidhyawati widow of Sewadas, was originally owner in possession of the house and land and some portion of the house was rented out to defendant No.2 to 6, who are in occupation and plaintiff No.2 is the daughter of son of the maternal uncle of Sewada. The marriage of plaintiff No.2 was arranged by Vidhyawati which was solemnized by her in her own house by incurring expenses being issueless. She allegedly executed a registered Will dated 29.07.1985, but the defendant(s) allegedly got the Will revoked vide registered revocation deed dated 16.02.1987 and therefore, the Will dated 08.10.1987 was executed in favour of the appellant-defendant No.1. The revocation has been proved through the testimony of the following witnesses:-

- (i) DW-1 Kishan Chand, Deed Writer
- (ii) DW-4 Darshan Singh, Registration Clerk
- (iii) DW-5 Yas Dev Saini, Tehsildar
- (iv) DW-6 Barjinder Singh.

The Courts below, after going through the evidence thread bare, did not cancel, but erroneously held that the Will dated 29.07.1985 was validly executed and discarded the Will on 08.10.1987 propounded by the appellant-defendant No.1 on the ground that the witness of the Will, namely, DW-3 Bhag Singh, was related to Arjan Singh. There was no relation of the testator with defendant No.1, whereas on contrary, defendant No.1 was of same *biradari* and had served Vidhyawati, during her old age. The requirement of Section 68 of the Indian Evidence Act has been proved. Even the registered Will has also been proved through the testimony of DW-3 Bhag Singh.

He further submits that revocation deed has been proved on record yet, the suit was dismissed, the Courts below have committed illegality and perversity in disbelieving the Will. Had the Will been taken into consideration being proved, the appellant-defendant No.1 would have the right to seek the declaration being in possession through independent proceedings, thus, urges this Court to formulate the following substantial questions of law:-

1. Whether the registered revocation deed dated 16.02.1987 has been proved in accordance with law or not?
2. Whether the registered Will dated 08.10.1987 executed by Vidhyawati in favour of the appellant-defendant No.1 has been proved in accordance with the provisions of Section 68 of the Indian Evidence Act and Section 63 (c) of the Indian Succession Act?
3. Whether the judgment and decree of both the Courts below

suffers from illegality and perversity?

Mr. R.N. Moudgil, learned counsel appearing on behalf of the respondent(s)-plaintiff(s) submits that on conjoint reading of the witnesses examined by the defendant(s) with regard to the revocation of the Will, it has *ex facie* been proved that all the witnesses deposed in favour of defendant No.1, for, Retd. Tehsildar remembered the age of Vidhyawati. He submits that the registered Will dated 08.10.1987 has not seen the light of day. The only certified copy of the Will (Ex.D-1) has been brought on record and therefore, the other party has been prevented from ascertaining its genuinity qua signatures etc., in essence, the appellant-defendant No.1 failed to examine any Expert and therefore, the Will has rightly been discarded. Even, Sewadas, during the cross-examination, also spilled bean, much less, his testimony by way of examination-in-chief is also in conformity with the provisions of Section 63 (c) of the Indian Succession Act, thus, urges this Court for setting aside the judgment and decree qua the findings with regard to the revocation and decretal of the suit and further prays for dismissal of the appeal(s).

I have heard the learned counsel for the parties and appraised the paper book and of the view that the appellant-defendant No.1 has failed to prove on record that the original Will being primary evidence, even, no application seeking leave of the Court to prove the Will by way of secondary evidence has been sought. For the sake of brevity, the relevant portion of the examination-in-chief of DW-3 Bhag Singh and DW-4 Arjan Singh, reads thus:-

"DW-3 Bhag Singh

Identify my signatures on the original Will which is produced in Civil Suit File No.238/28.4.88 pending in the court of SJIC Fatehgarh Sahib. Certified copy of the same is Ex.D-1.

DW-4 Arjan Singh

She executed a will in my favour. Certified copy of the same is Ex.D-1.”

Only certified copy of the Will has been proved and not original and rightly so, the Will has not been looked into. There is no substance in the plea of Mr. Animesh Sharma that other side did not take any objection and in this regard, also drawn the attention of this Court to the plaint. For the sake of brevity the relevant portion in the plaint reads thus:-

"7. That the defendant No.1 is in no way related to Smt. Vidya Wati and had no connection with her. He fraudulently and falsely in connivance with the Revenue Officials have got mutation of land in dispute sanctioned in his favour, to which he is not entitled to it in any way. The said mutation is said to be effected on the basis of some false and bogus Will alleged to be executed by Smt. Vidya Wati on 08.10.1987 which fact is absolutely wrong because on 08.10.1987, Smt. Vidya Wati was physically and mentally infirm and was not capable of executing any document like will and she never executed any Will. She never left her home on that date, as she was sick and was being looked after the plaintiffs. The defendant No.1 seems to have put some imposter lady in place Smt. Vidya Wati for purposes of forgery of Will in his favour, which does not give any title to the defendant no.1 in the property in suit."

Even otherwise, this Court cannot shut eyes and remain a mute spectator that even if, no objection is taken by other side, the Courts below are enjoined upon the obligation to examine this aspect as to whether a certified copy of the Will can be treated as primary evidence or not? I have

gone through the original record and found that there was no application seeking secondary evidence or order passed thereon, thus, the appeal bearing **RSA No.3938 of 1998** on this ground has no merit.

The substantial questions of law as noticed above are answered in favour of the respondent(s)-plaintiff(s) and against the appellant(s)-defendant No.1, thus, for the foregoing reasons, no ground is made for interference and accordingly, the appeal bearing **RSA No.3938 of 1998** is dismissed.

As regards the grounds taken in the appeal qua finding rendered by the Courts below with regard to the revocation deed dated 16.02.1987 vide which the Will dated 29.07.1985 has been revoked, it would be apt to examine the statement of the witnesses.

DW-6 Barjinder Singh in cross-examination submits he cannot recognize Vidhyawati in Ex.P-15 i.e. photograph, owing to weak eye-sight and therefore, he could not identify Vidhyawati in photograph (Ex.P-8). The cross-examination was done on 05.02.1988 almost five years thereafter. He recognized Vidhyawati only in one photograph (Ex.P-6) and further stated that he did not know whether she died or ever met him after the date of the execution of the revocation deed (Ex.D-2). DW-5 Yas Dev Saini, Tehsildar, in his examination-in-chief, stated that the cancellation deed was signed by Vidhyawati in his presence, but in cross-examination stated otherwise that everything was happened with a different ink and he only appended his signatures on the endorsement, thus, statement made in the examination-in-chief has been contradicted in his own cross-examination.

These aspects have not been noticed by both the Courts below.

DW-1 Kishan Singh, the Scribe of the alleged revocation deed stated in examination-in-chief that he scribed and read out the contents thereof to her and she put her signatures in the presence of Barjinder Singh Lamberdar, Gian Chand and Barjinder Singh, but he in cross-examination stated that he did not know Vidhyawati personally, neither he checked her identification, whether she was actually Vidhyawati or not. He further submitted that his licence of deed writer was cancelled, but obtained stay. He was also put a suggestion with regard to the registration of the FIR under Section 420 of the Indian Penal Code. In fact, the demeanour and veracity of the witnesses was checked in cross-examination. From the examination-in-chief and cross-examination of the Scribe, it has not disclosed that he had made any effort to check the identity of the Vidhyawati as to whether it was Vidhyawati or somebody else.

Mr. Aminesh Sharma, Advocate, during the course of the arguments, referred to the statement of PW-9 Gursew Kaur, to contend that the execution of revocation deed dated 16.02.1987 was signed by Vidhyawati.

Mr. R.N. Moudgil, in rebuttal, submits that the entire cross-examination has to be seen and not one line in the cross-examination can be read in isolation, whereas, the tenor/mode of the entire cross-examination reveals that the witnesses admitted the signatures of Vidhyawati on revocation deed. This witness further stated that the reverse of the revocation deed was not signed by Vidhyawati. All these evidences ought to have been looked into by both the Courts below for forming an opinion that whether actually Vidhyawati had revoked the Will dated 29.07.1985 vide

revocation deed dated 16.02.1987. The gamut of the entire cross-examination and examination-in-chief of the witnesses do not spell out that Vidhyawati was ever identified by them.

For the foregoing reasons, I am of the view both the Courts below misdirected and misread the evidence by declining the relief as sought in the plaint and accordingly, judgment and decree of both the Courts below with regard to the revocation deed is hereby set aside. The suit is decreed in toto. The decree sheet be prepared.

With the aforesaid observations, the appeal bearing **RSA No.3938 of 1998** is dismissed and the appeal bearing **RSA No.331 of 1999** is allowed.

11.05.2016
yogesh

**(AMIT RAWAL)
JUDGE**