

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 4932 of 2010 (O&M)
Date of Decision : 02.02.2016

Ram Gopal and anotherAppellants

Versus

Anil KumarRespondent

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Pritam Saini, Advocate
for the appellants.

Mr. Ashish Aggarwal, Senior Advocate
with Mr. Kulwant Singh, Advocate
for the respondent.

Surinder Gupta, J.

Plaintiffs-appellants Ram Gopal and Ram Kumar filed suit seeking relief of declaration to the effect that they be declared owner in possession of land measuring 56 *kanals* and 14 *marlas* as fully described in the headnote of plaint, situated in village Patehra, District Karnal on the basis of Will dated 24.09.1979, executed by Babu Ram in their favour and to set aside mutation No. 954 dated 28.03.2000, concerning the suit land, sanctioned in favour of the defendant on demise of Babu Ram. They sought further relief of injunction to restrain the defendant from alienating, transferring and leasing out the land on the basis of Will dated 20.05.1980 and from dispossessing plaintiffs from the suit land. Suit was dismissed by learned Additional Civil Judge (Senior Division), Karnal and the appeal filed by plaintiffs was also dismissed by Additional District Judge (FTC), Karnal. Not satisfied, plaintiffs have come up with this second appeal.

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

Brief Facts:

3. Babu Ram was owner in possession of land situated in village Patehra and village Butana. He died on 14.02.2000. Defendant-Anil Kumar is son of wife's brother of Babu Ram in whose favour he executed Will dated 19.05.1980, got registered on 20.05.1980 regarding his entire moveable and immovable property.

4. Plaintiffs in order to claim title over the land owned by Babu Ram at village Patehra put-forth following pleas:-

- (i) Babu Ram borrowed ₹800/- from plaintiffs on 14.05.1962 and handed over physical possession of suit land to them as security for the money borrowed.
- (ii) On 25.12.1971, a settlement regarding loan amount took place and a writing was executed which was signed by plaintiffs and Babu Ram alongwith attesting witnesses. Vide this settlement Babu Ram relinquished his ownership right over suit property in favour of plaintiffs.
- (iii) Babu Ram executed affidavit dated 24.09.1974 in favour of plaintiffs for change of entry in *khasra girdawari* of suit land in favour of plaintiffs which was then recorded in the name of plaintiffs.
- (iv) Babu Ram executed Will dated 24.09.1979 in favour of plaintiffs regarding the suit land by way of which plaintiffs were bestowed its ownership.
- (v) Pass-book of the landholding relating to suit land was handed over to plaintiffs by Babu Ram

at the time of *panchayati* settlement dated 25.12.1971.

5. On death of Babu Ram on 14.02.2000, plaintiffs contacted the revenue authorities to get mutation of suit land sanctioned in their favour on the basis of Will dated 24.09.1979 and came to know that mutation has already been sanctioned in favour of the defendant based on the Will of Babu Ram dated 20.05.1980. Plaintiffs tried to get certified copy of Will in favour of Anil Kumar-defendant which was not supplied and thereafter, a notice was sent to the defendant, who has no right, title and interest in the suit land. Plaintiff apprehended that taking benefit of the mutation of suit land in his favour, the defendant may alienate the same or dispossess plaintiffs forcibly.

6. The defendant contested claim of plaintiffs, denying that any loan was taken by Babu Ram or a Will was executed by him in their favour. However, possession of plaintiffs over the suit land was admitted as *gair mourusi* tenant. The defendant alleged that he is owner of suit land on the basis of Will dated 20.05.1980 executed by Babu Ram in his favour. All the other averments were contested, controverted and denied. Pleadings of the parties led to framing of the issues as follows:-

- (i) Whether the plaintiffs are owners in possession of the suit property on the basis of the Will dated 24.09.1979 and the impugned mutation No. 954 dated 28.03.2000 are illegal and void? OPP
- (ii) Whether the plaintiffs are entitled to the relief of permanent injunction as prayed for? OPP
- (iii) Whether the plaintiffs have no *locus standi* to

file the present suit nor the present suit is maintainable in its present form? OPD

- (iv) Whether the plaintiffs are estopped to file the present suit by their own act and conduct? OPD
- (v) Whether the present suit is hopelessly time barred? OPD
- (vi) Whether the plaintiffs have got no cause of action to file and maintain the present suit? OPD
- (vii) Whether the present suit is not properly valued for the purposes of court fee and jurisdiction? OPD
- (viii) Relief.

7. Learned Additional Civil Judge (Senior Division), Karnal held Will dated 20.05.1980 (Ex. D-1) as duly proved and observed that Will dated 24.09.1979 (Ex. P-1) propounded by plaintiffs is not proved. However, Ist Appellate Court, though, recorded no definite finding but observed that Will dated 24.09.1979 was the first Will of Babu Ram who had executed the second Will dated 20.05.1980 in favour of the defendant. Both were registered Wills and the subsequent Will executed by Babu Ram prevail upon the first Will.

8. Learned counsel for the appellants has argued that the land of Babu Ram in Village Patehra was already given to plaintiffs who were continuing to be in possession of this land. Will dated 20.05.1980 pertained to the land of village Butana and not to the land of village Patehra. While referring to revenue record produced on file he has argued that Babu Ram had not only executed Will dated 24.09.1979, in favour of plaintiffs but had also given affidavit dated 24.09.1974 (Ex. P-2) admitting

their title over the suit land. Pass-book of landholding (Ex. P-3) was also handed over to plaintiffs who had been cultivating the suit land being owner. Mutation No. 954 dated 28.03.2000 was got sanctioned at the back of plaintiffs. Babu Ram, vide settlement dated 25.12.1971, had settled the dispute of payment of loan of ₹800/- taken in the year 1962 by agreeing to transfer the ownership of land measuring 56 *kanals* 14 *marlas* in favour of plaintiffs and also to execute Will in their favour. This shows that at the time of execution of Will dated 20.05.1980, Babu Ram was not owner of land in village Patehra, as such, that Will pertained only to the land of village Butana.

9. Learned counsel for the respondent has argued that Will dated 24.09.1979 and 20.05.1980, are registered Wills. Perusal of Will dated 20.05.1980 shows that it pertained to the entire estate of Babu Ram and not with regard to land of village Butana. Copy of ration card (Ex. D-9) produced on record shows that Babu Ram was living with the defendant and his family. The land of village Butana was transferred by Babu Ram vide consent decree dated 11.11.1990 (Ex. D-2) in favour of the defendant. Plaintiffs are not related to Babu Ram in any manner and there was no reason and occasion for him to execute the Will in their favour. Even if, it is presumed that Will dated 24.09.1979 was duly executed in favour of plaintiffs, the Courts below have committed no error of law and fact while recording the finding that it is the later Will which is to prevail.

10. During course of arguments, learned counsel for the parties have not seriously disputed the evidence produced by the

parties to prove their respective Wills. Both the Wills were got registered. When there are two valid Wills executed by a person regarding some property it is the later Will which will prevail.

11. Possession of plaintiffs over the suit land is not disputed. Affidavit dated 24.09.1974 (Ex. P-2) was given by Babu Ram for change of entry in *khasra girdawari* in favour of Ram Gopal whom he had given the suit land for cultivation about 12 years before 24.09.1974. Settlement (Ex. PW-3/A) has also been relied by plaintiffs vide which Babu Ram agreed to transfer the suit land in favour of plaintiffs. However, plaintiffs have not propounded any other document of transfer of suit land in their favour executed by Babu Ram except his registered Will dated 24.09.1979 (Ex. P-1). As per this Will, suit land situated in village Patehra was bestowed on Ram Gopal son of Gori Shanker.

12. This fact is not disputed that Babu Ram was living with Anil Kumar and his family. He had executed Will dated 20.05.1980 (Ex. D-1) in favour of Anil Kumar. During course of arguments this Will was read threadbare by learned counsel for the respondent to dispel the submission of counsel for the appellants that it pertained to the land of village Butana and not to the land of Village Patehra. Perusal of the Will shows that it was executed for entire moveable and immovable property of Babu Ram and not with regard to the land situated in village Butana only. Perusal of Will (Ex. D-1) dispels the argument of learned counsel for the appellants that it pertained only to the land of village Butana owned by Babu Ram. Vide consent decree dated 11.11.1990, Babu Ram had transferred his land situated

in village Butana in favour of Anil Kumar-defendant.

13. In the absence of any valid document in favour of plaintiffs, transferring the ownership of suit land in their favour, Courts below have committed no error of law and fact while discarding their plea claiming title over the suit land. The only document on which plaintiffs rely in support of their contention while claiming title over the suit property i.e. Will dated 24.09.1979, was superseded by the subsequent Will of Babu Ram dated 20.05.1980.

14. On perusal of lower Court record and the judgments of both the Courts below, I find no legal or factual infirmity therein calling for any interference. No substantial question of law requiring determination arises in this appeal, which has no merits.

Dismissed.

February 02, 2016
jk

(SURINDER GUPTA)
JUDGE