

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. RSA-838-2010 [O&M]
Date of Decision : February 24th, 2016

Chetan Thukral
..... Appellant

Versus

Smt. Roopi Bai
.. Respondent

2. RSA-2700-2010 [O&M]

Smt. Roopi Bai
..... Appellant

Versus

Chetan Thukral
.. Respondent

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest? Yes

Present Mr. Vikas Kumar, Advocate,
for the appellant in RSA No. 838 of 2010 and for
the respondent in RSA No. 2700 of 2010.

Mr. Ajay Ghangas, Advocate,
for the respondent in RSA No. 838 of 2010 and for
the appellant in RSA No. 2700 of 2010.

SHEKHER DHAWAN, J.

The above mentioned two Regular Second Appeal are being
disposed of by this common judgment as both are directed against the
judgment and decree dated 9.11.2009 passed by learned Additional

District Judge, Faridabad whereby, on an appeal filed by Chetan Thukral, judgment and decree dated 13.10.2007 passed by the Court of first instance in favour of the plaintiff, was modified to the extent that Smt. Roopi Bai, plaintiff was held entitled to 50% share of the suit property as owner and defendant Chetan Thukral was directed to put her in possession to the extent of 50% in the suit property.

2. For the sake of convenience, parties are being referred to as per their status before the Court of first Instance.

3. Relevant facts of the case for the purpose of decision of these appeal are taken from RSA No. 2700 of 2010; that plaintiff – Smt. Roopi had filed a suit for declaration and consequential relief of possession and permanent injunction on the ground that she is owner of the house in dispute. Will dated 14.5.1992 allegedly executed by Smt. Bholi Bai is illegal, null and void and not binding on the rights of the plaintiff and is liable to be set-aside. The plaintiff asserted to be owner of house bearing No. 3/375. Earlier, Hemraj son of Tirath Ram, father of the plaintiff was owner in possession of the house in dispute and the said house was bearing No. 195. Hemraj executed a Will dated 4.1.1977 in respect of the house in dispute and other immovable and moveable properties. Hemraj had bequeathed his properties in favour of his wife Smt. Bholi Bai for a limited period, i.e. Upto the time of Smt. Bholi Bai. After the death of Smt. Bholi Bai, all properties left behind by Smt. Bholi Bai were to be succeeded by the plaintiff being the sole legal heir. House in question was also to be inherited by the plaintiff after the death of Smt. Bholi Bai as Smt. Bholi Bai was limited owner upto her life time. Smt. Bholi Bai was not legally competent or authorized to alienate the house in question in any manner.

Smt. Bholi Bai died on 3.2.1997. After her death, the plaintiff inherited the house in question being legal heir of Smt. Bholi Bai and on the basis of Will dated 4.1.977 executed by Hemraj in favour of Smt. Bholi Bai.

4. As per the plaintiff, she is residing at Delhi and the defendant is taking undue advantage of her absence and forcibly dispossessed her from the house in question on 1.4.1977. The alleged Will dated 14.5.1992 allegedly executed by Smt. Bholi Bai in favour of the defendant is result of fraud having been committed by the defendant upon Smt. Bholi Bai. The same was never thumb-marked by Smt. Bholi Bai. More so, the Will dated 14.5.1992 is highly suspicious as no reason has been given for ignoring the plaintiff, who is real daughter of Smt. Bholi Bai. The defendant is totally stranger to the family. Smt. Bholi Bai was not legally competent to adopt the defendant as son. More so, the defendant was more than 15 years of age and was not capable to be taken into legal adoption and the story of adoption is falsified. The alleged Will is surrounded by so many suspicious circumstances because Smt. Bholi Bai had no necessity to execute the alleged Will. More over his age has been given as 20 years which is factually incorrect. On these facts, the suit was filed before the Court of first instance.

5. Defendant contested the suit taking the plea that the suit is not maintainable. He denied that the plaintiff is owner of the house in question as in fact, the defendant is owner in possession of the house earlier. The house in question was owned and possessed by Hemraj and the defendant is the adopted son of Hemraj. Defendant also denied the plea that the plaintiff has any relation with Smt. Bholi Bai or Hemraj. As the house in question was never in the possession of the plaintiff, there is no question of

her being dispossessed from the suit property. Will dated 14.5.1992 has been challenged on non-existent grounds. In fact, the defendant was taken in adoption when he was 06 years of age by Smt. Bholi Bai and Hemraj as per Hindu rites and customs. Defendant looked after Smt. Bholi Bai and Hemraj and because of love and affection, Smt. Bholi Bai executed the Will dated 14.5.1992. Smt. Bholi Bai was made absolute owner in possession of suit property by way of settlement which was not objected by any one and Smt. Bholi Bai was authorized to execute the Will in favour of the defendant. On the death of Smt. Bholi Bai on 3.2.1997, the defendant succeeded the suit property and spent a huge amount on the construction of house in question and he is in possession of the suit property.

6. On the pleadings of the parties, issues were framed. Parties led their respective evidence and after appreciating the entire oral as well as documentary evidence brought on record by the parties, the Court of first instance decreed the suit of the plaintiff holding that she is absolute owner of the house in question and Will Ex. DW-7/1 is not binding on the rights of the plaintiff and decree of possession of the house in question was passed in favour of the plaintiff and against the defendant.

7. The defendant preferred an appeal before the Court of first Appeal and the first appellate Court modified the judgment and decree having been passed by the Court of first instance to the effect that plaintiff is owner of suit property to the extent of 50% and is entitled to possession to that extent. Defendant was directed to put her in possession to the extent of 50% and hence, the present Regular Second Appeals.

8. Taking RSA No. 2700 of 2010, learned counsel for the appellant-

plaintiff [Smt. Roopi Bai] submitted that Will dated 4.1.1977 [Ex. P1] was duly executed by Hemraj whereby only life interest was passed on to Smt. Bholi Bai. That was under Section 14(2) of the Hindu Succession Act. Learned counsel for the plaintiff-appellant also submitted that Hemraj died before Smt. Bholi Bai, somewhere in 1978-79. If the contention of defendant-respondent is taken to be correct that Hemraj had not executed any Will in favour of Smt. Bholi Bai then the property was to go to the plaintiff straightway on the basis of natural succession. More so, the execution of Will, Ex. D1 has been admitted by the defendant in his cross-examination while appearing as DW-8. Deed-Writer was also examined who is also the attesting witness and he has proved the Will. DW-1 has also admitted in his cross-examination that property was inherited by Smt. Roopi Bai through her father and not through her husband and that fact demolishes the entire case of the defendant. It had come in the statement of PW-2 that both the attesting witnesses had already died. The Court of first instance had recorded these observations after appreciating the correct facts, but the Court of first Appeal recorded erroneous findings and the judgment and decree dated 9.11.2009 passed by the Court of first Appeal are liable to be set-aside.

9. Learned counsel for the plaintiff-appellant placed reliance on a judgment of Hon`ble Supreme Court in **Sharad Subramanyan Vs. Soumi Mazumdar & Ors., 2006 (3) R.C.R. [Civil] 447**, that as per provisions of Section 14(1) and 14(2) of Hindu Succession Act, 1956 [for short, “**the Act**”], if husband executes a Will giving life time interest in property to the wife, such a wife does not become absolute owner of the property and get only limited right namely life interest in the suit property. It is to be

considered whether there is any material to indicate that property was given to the wife in lieu of her right of maintenance etc., whereas in the case in hand, there is no such plea and that way, Smt. Bholi Bai got life time interest only in the property on the basis of Will. The said Will Ex. P1 has been duly proved on the file. On the same point, reliance has also been placed on **Gaddam Ramakrishnareddy & Ors. Vs. Gaddam Rami Reddy & Anr., 2011 AIR [SC] 179** and **Sadhu Singh Vs. Gurdwara Sahib Narike & Ors., 2006 (4) RCR [Civil] 468.**

10. Learned counsel for the defendant [Chetan Thukral] submitted that Smt. Bholi Bai was the exclusive owner of the house in question and the Will dated 14.5.1992 [Ex.DW-7/1] was validly executed in favour of the defendant. He further submitted that otherwise also, by operation of law and as per provisions of Section 14(1) of the Act, Smt. Bholi Bai became exclusive owner of the property after the death of Hemraj. That way, undisputedly, Smt. Bholi Bai was absolute owner of the property after the death of Hemraj. On this point, reliance was placed on the judgment of Hon`ble Supreme Court in **Jupudy Pardha Sarathy Vs. Pentapati Rama Krishna and others, 2015 AIR SCW 6258, Vaddeboyina Tulasamma and others Vs. Vaddeboyina Sesha Reddi [Dead] by LRs 1977 (2) SCC 99** and **Subhan Rao and another Vs. Parvathi Bai and others 2010(4) RCR [Civil] 542.** More so, the plaintiff – Smt. Roopi Bai had never challenged this arrangement during the life time of Smt. Bholi Bai.

11. Learned counsel for the defendant also took the plea that the plaintiff had filed suit for seeking possession of the property and even required court fee has not been filed. According to him, it has come on the file that both the attesting witnesses are alive. He further submitted that

the judgment and decree passed by the Court of first Appeal is liable to be modified that the defendant-appellant is owner of the entire property and not to the extent of 50%.

12. After hearing learned counsel for the parties, this Court is of the considered view that the following substantial questions of law arise for determination and decision by this Court in the present appeals:-

- 1]. Whether Smt. Bholi Bai was having life time interest in the property on the basis of Will Ex. P1?
- 2]. Whether limited ownership right ripened into full ownership in favour of Smt. Bholi Bai as per provisions of Section 14[1] or as per provisions of Section 14[2] of the Act?

13. Having considered the submissions made by learned counsel for the parties and after going through the material on the file, this Court is of the considered view that certain facts are not disputed in any way that Hemraj was owner of the property in question. Smt. Bholi Bai was wife of Hemraj and plaintiff Smt. Roopi Bai is daughter of Hemraj and Smt. Bholi Bai. Hemraj died somewhere in 1978-79 and exact date is not coming on the file. But undisputedly, he died before the death of Smt. Bholi Bai, which took place on 3.2.1997. As per version of the plaintiff-appellant, Hemraj had executed a Will dated 4.1.1977 [Ex. P/1] thereby giving life time interest in favour of Smt. Bholi Bai and thereafter, the said property was to revert back to the only legal heir on the basis of natural succession as well in favour of Smt. Roopi Bai, who is daughter of Hemraj and Smt. Bholi Bai. There is no material evidence available on the file that life time interest having been given to Smt. Bholi Bai was in lieu of some maintenance allowance or settlement and as such, the present case is not covered

under Section 14(2) but under Section 14(1) of the Act.

14. As regards to execution of Will dated 14.5.1992 [Ex. DW-7/1] in favour of defendant Chetan Thukral, the said Will is certainly a suspicious document for more than one reasons. First of all, there was no reason for Smt. Bholi Bai to exclude Smt. Roopi Bai. The adoption of defendant – Chetan Thukral by Smt. Bholi Bai is also not proved and there was no reason for valid adoption of defendant by Smt. Bholi Bai.

15. As regards to the relationship of plaintiff – Smt. Roopi Bai as daughter of Smt. Bholi Bai and Hemraj, the plaintiff herself appeared as PW-2 and deposed so. PW-3 Guru Datt supported the version that Smt. Roopi Bai is the real daughter of Smt. Bholi Bai. PW-3 is none else but cousin of Hemraj. More so, defendant himself admitted the relationship of Smt. Roopi Bai to be that of daughter of Hemraj and Smt. Bholi Bai. DW-1 Ram Lal admitted this fact in his examination-in-chief that Hemraj and Smt. Bholi Bai were having daughter namely, Smt. Roopi Bai. DW-2 also admitted that Smt. Roopi Bai is daughter of Hemraj and Smt. Bholi Bai. If the entire statement of DW-3, Manohar Lal is taken into consideration, this witness has also more or less admitted that Smt. Roopi Bai is the daughter of Hemraj and Smt. Bholi Bai and the Court below rightly recorded the finding that the plaintiff, Smt. Roopi Bai is daughter of Hemraj and Smt. Bholi Bai. The execution of Will [Ex. P1] dated 4.1.1977 stands duly proved on the file. More so, version of defendant is also based upon rights having been conferred in favour of Smt. Bholi Bai. Otherwise, Smt. Bholi Bai was owner to the extent of ½ share.

16. As regards to execution of Will dated 14.5.1992 [Ex. DW-7/1], in the light of the fact that Smt. Roopi Bai proved to be daughter of Hemraj

and Smt. Bholi Bai and Smt. Bholi Bai having been given life time interest in the suit property, after the death of Smt. Bholi Bai, the entire property was to revert back to the original owner on the line of succession and Smt. Bholi Bai was legally not competent to execute any Will. Leaving aside all other facts that the Will Ex. DW/7-1 was not a genuine Will having been executed by Smt. Bholi Bai, the Court of first instance has rightly recorded the findings that plaintiff Smt. Roopi Bai is owner of house in question and she is entitled to the vacant possession of house in question. However, the Court of first Appeal has taken an erroneous view on the point that Will Ex. DW-7/1 was proved, whereas, the said Will cannot be said to have been lawfully executed by Smt. Bholi Bai as she was legally not competent having life interest in the property only. The Will Ex. DW-7/1 is surrounded by various suspicious circumstances which make execution of the document to be doubtful. As such, findings recorded by the Court of first Appeal on that point are erroneous and the impugned judgment and decree dated 9.11.2009 passed by the Court of first Appeal are set-aside.

17. Resultantly, **RSA No. 2700 of 2010** filed by plaintiff Smt. Roopi Bai is accepted and the impugned judgment and decree dated 9.11.2009 passed by the Court of first Appeal are set-aside while judgment and decree passed by the Court of first instance, dated 13.10.2007 are maintained and the plaintiff is held entitled to declaration to the effect that she is the absolute owner of the house in question and the Will dated 14.5.1992 [Ex. DW-7/1] is not binding on the rights of the plaintiff and she is entitled to possession of the house in question. The defendant shall hand over the vacant possession of the house in question to the plaintiff within three months from the date of receipt of copy of this judgment.

However, the plaintiff-appellant shall deposit the required court fee for seeking relief of possession of house in question with the Court of first instance within a period of two months from receipt of copy of this order, failing which the appeal filed by Smt. Roopi Bai shall stand dismissed.

Consequently, **RSA No. 838 of 2010** filed by Chetan Thukral [defendant-appellant] stands dismissed.

(SHEKHER DHAWAN)
JUDGE

February 24th, 2016
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