

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.3802 of 2012

Date of Decision:23.09.2016

Satpal

... Appellant

Vs.

Surasti Devi and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Jainainder Saini, Advocate
for the appellant.

Amol Rattan Singh, J.

1. This is the second appeal of the contesting defendant in a suit filed by respondent No.1 herein, i.e. plaintiff (hereinafter to be referred to as such), who is his sister, seeking a decree of declaration and injunction against the appellant in respect of 40 kanals, 15 marlas of land being a 113th share in 122 kanals, 5 marlas of land, originally owned by the grand-father of the appellant and the plaintiff (respondent No.1).

After the death of their grandfather, a mutation of inheritance was entered in the name of their father, Ram Chander, on 21.07.1987, the property being co-parcenary property, as averred in the plaint.

Ram Chander died on 05.02.2007 and therefore, it was the case of the plaintiff that she became owner in possession of a 1/5th of the share of the suit property but the appellant allegedly got a will executed in his favour on 02.01.2007, which he got registered after the death of Ram Chander, on 29.03.2007, which the plaintiff stated was against the law and “without jurisdiction”.

It was further stated in the plaint (the facts being taken presently from the judgment of the learned Civil Judge (Jr. Divn.), Hisar), that the will was actually based upon a fraud, as Ram Chander was 85 years of age and on 01.01.2007 he suffered a brain haemorrhage at 4.00 p.m. and got admitted to hospital, with the doctor stating on 02.01.2007 that no treatment could be given to him. Thus, it was further contended, that he was brought home in an unconscious condition, where he died on 05.01.2007. Yet further, it was averred by the plaintiff that the appellant had got the thumb impressions of their father when he was unconscious and thereafter got the will typed out on the paper.

The contention therefore was, that firstly, the property being ancestral, Ram Chander in any case could not have executed a will in favour of appellant-defendant No.1 and further, the will was got executed by perpetuating a fraud.

It was further contended that after the death of Ram Chander, a mutation was got entered by the appellant with the Halqa Patwari and on that basis, he wanted to take possession of the suit land, to which he had no right.

Hence, the suit was instituted by the plaintiff on 18.09.2007, seeking a declaration that the will dated 02.01.2007, registered vide deed No.896 dated 29.03.2007, was illegal, null and void, being based upon a misrepresentation and fraud.

2. In the reply filed by the appellant/defendant No.1, he took the usual preliminary objections with regard to no cause of action, concealment of facts and maintainability etc.

On merits, it was contended that the grandfather of the parties, i.e. Dhani Ram, owned 40 kanals 15 marlas of land and after his death, a

mutation of inheritance came to be entered in the names of Ram Chander and “his uncle” . It was admitted that Ram Chander died on 05.01.2007 but the will was stated to be genuinely executed on 02.01.2007, though it was admitted that it was got registered thereafter by the appellant, as he had become the owner in possession of the suit land. It was denied that such registration was against law, or that the will was based on any fraud committed by him.

It was further contended that Ram Chander executed the will in favour of the present appellant as per his own wishes, without any pressure, and had appended his signatures on it in the presence of witnesses, as he lived with the appellant, who had served his father with love and affection. It was, of course, denied that Ram Chander was unconscious and that his thumb impressions were taken on blank papers by the appellant.

Defendants No.2 to 4 (presently respondents No.2 to 4 herein) are also sisters of the appellant, i.e. daughters of Ram Chander. They filed a separate written statement in favour of the appellant, stating that their father had “released a will in his favour which was got registered and that the plaintiff was also bound by the will”. It was further stated in the reply of the other defendants that the will was “considered as correct”, after which they had all appended their signatures to it. Their father was stated to have been in a fit state of mind when he executed the will. These defendants also denied that his thumb impressions had been taken while he was in an unconscious state of mind.

3. No replication having been filed by the respondent-plaintiff, the following issues were framed by the learned Civil Judge (Jr. Divn.), Hisar:-

“1.Whether the will dated 2.1.07 registered vide registered deed no.896 dated 29.3.07 is against law, without jurisdiction, illegal, null and void

and is based on fraud and misrepresentation?OPP

2. Whether the plaintiff has cause of action to file the present suit?OPD
3. Whether the suit of the plaintiff is not maintainable?OPD
4. Whether the suit of the plaintiff is estopped by her own act and conduct to file the present suit?OPD
5. Whether the plaintiff has not come in the Court with clean hands?OPD
6. Relief.”

4. The plaintiff examined one Dr. Krishan Singhal as PW-1, who proved the hospital record (Ex.P-1), one Virender Singh, who appeared and testified as PW-2 and proved a copy of the will (Ex.P-2), herself as PW-3, tendering her affidavit reiterating the contents of the plaint and one Om Parkash Kajla, as PW-4, who also tendered his affidavit.

By way of documentary evidence, amongst other documents, the plaintiff is shown to have tendered the 'jamabandis' (records of right) of the year 2000-03 as Ex.P5, the year 1997-98 as Ex.P-6, a mutation no.1473, dated 21.07.1987 as Ex.P7, a mutation in the Persian script as Ex.P8 and another mutation bearing no.441 dated 15.06.1936 (in Devnagri) as Ex.P9.

5. For the appellant, one Ram Singh appeared as DW-1 and tendered his affidavit, another Mahabir, appeared as DW-2, the appellant himself appeared as DW-3 to prove the will (Ex.D-1), Ram Parsad appeared as DW-4 and respondent-defendant No.4, Bhateri Devi, appeared as DW-5, with all these witnesses also tendering their respective affidavits in evidence.

6. After considering the pleadings and appraising the evidence, the learned Civil Judge noticed that it was the stand of the defendants that the father of the parties was not barred from making a will even in respect of coparcenary/ancestral property and that the will was executed on account of the love and affection and service of the appellant to his father.

Thereafter, holding that the burden of the execution of a valid

will being wholly on the appellant, he being the beneficiary thereof, it was found that as regards DWs 1, 2 and 4 , they had all submitted their affidavits and testified that they knew Ram Chander personally and that he had executed a will in favour of the appellant on 02.01.2007, which had been read over to Ram Chander, and thereafter, upon it being found to be correct by him, they, (the witnesses to the will (DWs 1, 2 and 4), had appended their signatures/thumb impressions on the document.

However, it was held by that Court that the cross-examinations of these witnesses were contradictory to each other inasmuch as, whereas DW-1 (Ram Singh) stated that Ram Chander was admitted to Singla Hospital on the first day due to his brain haemorrhage “which happened after 2nd day of the month”, and that he, Mahabir and Ram Parsad (DW-2 and DW-4 respectively) had taken Ram Chander to Hospital on 01.01.2007 along with the Sarpanch, Om Parkash. Ram Singh (DW-1) had further stated that Ram Chander, when they left in the hospital, was in “good condition”. The witness however expressed his lack of knowledge as to whether after a brain haemorrhage, a person remains in a condition to speak or not. He further stated that they had come to the Court with Ram Chander in the month that the will was got typed in, but he could not give the exact month when it was actually typed, in the presence of himself, the appellant and Om Parkash Kajla (PW-4). He also could not give the name of the Advocate who had put his signatures on the stamp. Yet further, he stated that they had gone to the office of the Tehsildar on that date, but he was not in office, after which Ram Chander had put a thumb impression on the will, which was written on a stamp paper, signed by the three witnesses, i.e. DW-1, DW-4 and Om Parkash, Sarpanch (PW-4). The time of this activity was given by this

witness to be 11.00 a.m. He further stated that Ram Chander was sitting in a vehicle when they had brought him and that the whole process took about 'more than ½ hour'.

Mahabir (DW-2) stated that Ram Chander was got admitted in hospital on 01.01.2007 but that he (this witness) did not go to the hospital and had received a telephone call in the evening and thereafter went to the hospital on 02.01.2007 and remained in hospital till Ram Chander was discharged at 4.00 p.m. This witness also stated that he was the son of the sister of Ram Chander. He further stated that the will was written with a pen by a document writer and that they had gone to the office of the Tehsildar where it was written. He, thereafter, stated that “one Tehsildar was sitting” but he could not say whether he was the “senior or junior” Tehsildar.

This witness also stated that he, Ram Parsad and Om Parkash, Sarpanch, had appended their signatures to the will. The witness further stated that Ram Chander was “presented before the Tehsildar” on the day when the will was written and signed by the executing and the witnesses.

Ram Parsad (DW-4), in his cross-examination, on the other hand, stated that Ram Chander had suffered a brain haemorrhage and that in such a situation the person concerned become unconscious and that Ram Chander was actually taken home in an unconscious condition. He was also unconscious on the 4th of the month. He further stated that the will was got written by a document writer whose name he did not know but according to this witness, they had not gone to the Tehsildar on that day.

7. In his own examination-in-chief as DW-3, the appellant had stated that his father had executed the will in his favour in his complete senses without any pressure, in the presence of the witnesses, after which he

had put his thumb impressions on it along with the witnesses.

In cross-examination, the appellant stated that his father became ill at home on 01.01.2007 and was got admitted at the Singla Hospital, Hisar but he denied that the doctor had stated that it was a case of brain haemorrhage.

Actually, as per the appellant in his cross-examination, the doctor stated that he had not understood the matter and had thereafter discharged Ram Chander on 02.01.2007, after which they had not gone to any other hospital but had taken their father home, where he kept lying on the bed and died on 05.01.2007.

The appellant further stated in his testimony that the will was got written by his uncle, Ram Singh, and another uncle Parveen Kumar, whom he did not know. However, nobody appended his signatures on the will in his presence.

8. His sister, Bhateri (respondent No.4), in her affidavit as DW-5, stated that the will was got scribed by her father in her presence, who after understanding it, had appended his thumb impression on it, in a fit state of mind. On cross-examination, she too stated that her father died on 05.01.2007 and that he had called her a few days before that. She had admitted that he had suffered from a brain haemorrhage due to which he died.

9. The learned Civil Judge also found that Om Parkash Kajla, the Sarpanch, who was stated to be another witness to the will, had submitted an affidavit as a witness for the plaintiff, that Ram Chander had not executed any will in his presence, nor was he in a position to do so, as he remained unconscious after 01.01.2007 till his death.

Dr. Krishan Singhal (PW-1) testified that Ram Chander was

admitted to the Singhal Medical Centre, Hisar, on 01.01.2007, due to a brain haemorrhage and that he was “deeply unconscious” and remained admitted to the hospital up till 02.01.2007.

He further testified that the brain haemorrhage was verified by CT Scan and that the patient was not in any condition to speak at all.

The doctor further testified that “he must have died after being relieved from his hospital as there was no hope for his revival”.

10. On appraising all the aforesaid evidence, the learned Civil Judge came to the conclusion that actually Ram Chander had suffered a brain haemorrhage even as per the doctor, and was not in a condition to speak at all, being unconscious, and therefore, it was not possible that he could have executed a will. The testimony of the Sarpanch, PW-4 Om Parkash Kajla, further having corroborated the aforesaid finding, the testimonies of the witnesses for the appellant-defendant were not believed by that Court, also finding that there was a contradiction with regard to the Tehsildars' presence at the time when Ram Chander allegedly went to execute the will along with the witnesses thereto.

It was further held that even the scribe/co-scribe of the will, Parveen Kumar, was not examined and consequently, the will set up by the appellant had to be declared to be based upon a fraud and misrepresentation.

11. Consequently, the suit of the plaintiff-respondent was decreed by the learned Civil Judge, further restraining the appellant-defendant No.1 from selling more than his share of the land owned by Ram Chander.

12. In the first appeal filed by the appellant, learned Additional District Judge (Fast Track Court), Hisar, came to the same conclusion as the lower Court, for the reasons given by that Court and further, for the reason

that the will was admittedly registered well after Ram Chanders' death.

That appeal was, therefore, dismissed.

13. It needs to be noticed here that after that this 2nd appeal was filed in the year 2012 but was adjourned time and again 4 times in succession, in the absence of counsel and thereafter twice on a request made by him for adjournment, with the second request accepted only on payment of Rs.5,000/- as costs.

Thereafter, again none appeared for the appellant twice in a row but despite that, since the lis was between brother and sisters, the parties were directed to appear before the learned Mediator, in the Mediation and Conciliation Centre of this Court, vide an order dated 07.04.2016.

Again thereafter, when the mediation failed upon the respondent-plaintiff not turned up for mediation, and the matter being put up again before this Court, either none appeared for the appellant, or learned counsel sought an adjournment.

Finally, when this Court passed an order on 05.09.2016, that if the matter was not argued on the next date of hearing, i.e. 22.09.2016, it would be deemed to have been dismissed-in-default, the learned counsel finally addressed arguments on that date but could not apprise this Court as to whether there was any finding with regard to the property being a coparcenary property or not. Consequently, it was adjourned to today, i.e. 23.09.2016.

Learned counsel has stated that there was no such finding but has essentially reiterated that even if it is coparcenary property, the deceased was not barred from willing it away.

14. He, of course, on query from the Court, could not deny that the

evidence of the doctor to the effect that the deceased had actually suffered a brain haemorrhage on 01.01.2007, from which he never recovered till his death on 05.01.2007. Naturally, therefore, learned counsel could not justify as to how in a completely unconscious condition, a will could have been executed by the deceased Ram Chander on 02.01.2007.

In view of the above, when the will in question itself has been duly proved to have been (purportedly) executed at a time when the testator was not in any sound state of mind, nothing further really remains to be said, with the witnesses for the appellant obviously having simply testified in his favour, but with no rebuttal to the testimony of, firstly, the doctor, who on the basis of the record, proved that deceased Ram Chander was admitted to hospital on 01.01.2007 with a brain haemorrhage and was discharged on 02.01.2007 in an unconscious state.

Further, with one of the alleged witnesses to the will, i.e. Om Parkash Kajla, Sarpanch of the village, also having testified that Ram Chander had never executed any will in his presence, even the written statement of the other sisters of the appellant and defendant No.1, in support of their brother, as also the testimony of one of them, lose significance. It is very obvious that they were simply supporting their brother with regard to retention of the property of their father, by him.

This is further to be seen with the fact that DW4, Ram Parsad, stated by DWs 1 and 2 to be also an attesting witness to the will, deposed that Ram Chander indeed had suffered a brain haemorrhage. In contradiction to the testimonies of DWs 1 and 2, DW4 stated that they had not gone to the Tehsildars' office that day. Further, according to this witness the will was scribed by a deed writer, whereas the appellant deposed that it

was scribed by his uncles, Ram Singh and Parveen Kumar.

15. Nothing has been pointed out to this Court, by which the finding of fact by the Courts below, can be held to be perverse or erroneous in any manner, to the effect that Ram Chander was not in a conscious state to enable him to execute a will in favour of the appellant.

Though in view of the above, nothing further needs to be said on the issue of the property being coparcenary or not, it does need to be noticed that the stand of the appellant- defendant, even as per the arguments raised before the learned Civil Judge, was that even coparcenary property could be willed away.

Thus, there was no denial to the fact that it was coparcenary property, which therefore could only have been willed away to the extent of the own share of the testator, in terms of Section 30 of the Hindu Succession Act, 1956, i.e. Ram Chander could at best have alienated his own share in the coparcenary property, to which otherwise the appellant and all the four respondents, including respondent No.1/plaintiff, also had an equal share, Ram Chander having died after the amendment in Sections 6, 8 and 30 of the Act of 1956 came into force (on 09.09.2005), by which daughters have also been declared to be coparceners in ancestral property, at par with the sons in a Hindu family.

However, with the will itself having been held by the Courts below to have been based upon a fraud and that finding having been upheld by this Court, obviously Ram Chander had not actually willed away even his own share in coparcenary property (even if it was to be accepted as such, in view of the fact that such nature of the property has not been denied at any stage by the appellant). If it is not coparcenary property, then too, with the

will proved to have never been validly executed in a sound disposing mind, by the executor thereof, the property in any case would devolve by natural succession in equal shares upon all his legal heirs, including the respondent-plaintiff.

16. Consequently, in view of the above discussion, finding no merit in the appeal, it is dismissed in limine, but in view of the fact that costs of Rs.5,000/- have already been imposed at one stage (for non-appearance of counsel), no further costs are being imposed now.

September 23, 2016
vcgarg

(AMOL RATTAN SINGH)
JUDGE

1. Whether Reportable?	Yes
2. Whether speaking/reasoned?	Yes