

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

R.S.A No.988 of 2012 (O&M)

Date of decision :23.08.2016

Mam Chand @ Rajinder Parshad

..... Appellant

Versus

Jawala Devi and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Surinder Mohan Sharma, Advocate
for the appellant.

Mr. Kuldeep S. Chaudhary, Advocate
for the respondents.

DARSHAN SINGH,J

The present appeal has been preferred against the judgment and decree dated 05.11.2011 passed by the learned District Judge, Ambala, whereby the appeal filed by appellant-plaintiff against the judgment and decree dated 18.08.2010 passed by the learned Additional Civil Judge (Sr. Division), Naraiangarh, has been dismissed.

2. Appellant-plaintiff has filed the suit for declaration to the effect that he is owner to the extent of 1/ 6th share in the total land measuring 484 Kanals 7 Marlas situated in village Tasrouli, District Ambala i.e. total estate left by deceased- Dina Nath with all the rights in the Abadi Deh and Shamlat Deh. Plaintiff has also challenged the mutation no. 1584 entered on the basis of the Will allegedly executed by deceased-Dina Nath in favour of respondents no.1 to 5.

3. As per the averments in the plaint, Dina Nath was the owner

of the suit property. Appellant-plaintiff is the son of Nirmala Devi @ Sundri, daughter of late Dina Nath. She was married to Siya Nand, resident of village Kammi, Tehsil and District Panchkula. Defendants are also the daughters of said Dina Nath. Plaintiff was brought up by late Dina Nath as his mother had died on 15.12.1963. Dina Nath had never executed any Will during his life time and died intestate on 26.08.1989. Defendants after the death of Dina Nath assured that plaintiff will be deemed to be owner and in possession of the suit property to the extent of 1/ 6th share. But, thereafter they refused to acknowledge his rights on the basis of the alleged Will. It is further pleaded that the said Will is liable to be set aside as Dina Nath was not in sound mind while executing the same. The said Will is manipulated and is forged document. It was never signed and thumb marked by Dina Nath. The Will in question is surrounded by various suspicious circumstances. The property was ancestral and deceased was not competent to bequeathed the same by way of Will. Hence the suit.

4. Respondents-defendants contested the suit on the grounds *inter alia* that the plaintiff is not the son of Nirmala Devi @ Sundri. She was also not the daughter of deceased-Dina Nath. It was further pleaded that Dina Nath had executed a valid registered Will dated 11.02.1985 in favour of the defendants while he was in good health and full disposing mind in lieu of the services rendered by the defendants. Dina Nath was not having any male issue. They further pleaded that they had got no other sister namely Nirmala Devi @ Sundri and plaintiff is not the grandson of deceased-Dina Nath. He has no relation with said Dina Nath.

Dinan Nath was the absolute owner of the property in dispute and was competent to deal with it in any manner he likes. With these pleas they pleaded for dismissal of the suit.

5. From the pleadings of the parties, the following issues were framed by the learned trial Court vide order dated 04.03.2005 after obtaining the replication:-

1. Whether the plaintiff is owner of 1/ 6th share in the suit property on the ground mentioned in the plaint?OPP
2. Whether the mutation bearing no. 1584 is illegal, null and void and liable to be corrected on the grounds mentioned in the plaint?OPP
3. Whether plaintiff is entitled to decree of possession of the suit property with consequential relief of permanent injunction as prayed for?OPP
4. Whether suit of the plaintiff is within limitation?OPD
5. Whether suit is not maintainable in the present form?OPD
6. Whether the suit is bad for mis-joinder and non joinder of necessary parties?OPD
7. Relief.

6. Vide order dated 05.06.2009, the following additional issue was framed by the learned trial Court:-

- 6-A Whether Sh. Dina Nath had executed a valid registered Will dated 11.02.1985 in favour of defendants, if so its effect?OPD

7. On appreciating the evidence adduced by the parties and the contentions raised by their counsels the learned trial Court dismissed the suit filed by the appellant-plaintiff vide impugned judgment and decree dated 18.08.2010.

8. Aggrieved with the aforesaid judgment and decree he preferred the appeal, which was also dismissed by the learned First Appellate Court vide impugned judgment and decree dated 05.11.2011. Hence this Regular Second Appeal.

9. I have heard Mr. Surinder Mohan Sharma, Advocate, learned

counsel for appellant, Mr. Kuldeep S. Chaudhary, Advocate, learned counsel for the respondents and have meticulously gone through the paper book.

10. Initiating the arguments, learned counsel for the appellant contended that the main question to be decided in the present case is with respect to the relationship of the plaintiff with deceased-Dina Nath. Deceased- Dina Nath was the maternal grandfather of the plaintiff-appellant. He contended that the plaintiff-appellant has led oral as well as documentary evidence to establish this fact. The plaintiff has brought on file the birth certificate of Nirmala Devi @ Sundri, the mother of the appellant, the copy of the *Bahi* entries made at the time of marriage of the plaintiff and death certificate of Nirmala Devi @ Sundri. All these documents establishes that deceased-Dina Nath was the maternal grandfather of the plaintiff. Even, the oral evidence adduced by the plaintiff-appellant has proved his relation with Dina Nath. He contended that DW-2- Hari Ram, the ex-sarpanch of village has admitted that he has seen Mam Chand in village Tasrouli. DW-3 Jasbir Singh also admitted that he has heard in the village that the elder daughter of Dina Nath has died. Thus, he contended that even the evidence adduced by the appellant is corroborated from the admissions of the witnesses examined by the respondents. So, he contended that appellant is proved to be the grandson of Dina Nath being the son of his daughter-Nirmala Devi @ Sundri.

11. he further contended that the Will allegedly executed by Dina Nath in favour of respondents no.1 to 5 is illegal. The same is surrounded by various suspicious circumstances. There is absolutely no

reference of Nirmala Devi @ Sundri in the said Will. Thus, he contended that the Will dated 11.02.1985 is liable to be discarded and appellant-plaintiff is proved to be the owner of the suit land to the extent of 1/ 6th share on the basis of natural succession.

12. On the other hand, learned counsel for the respondents contended that the oral evidence cannot establish the relationship. In the birth certificate, the name of the girl child is not legible. So, it cannot be connected to Nirmala Devi @ Sundri. In the *Bahi* entry, the relationship of Dina Nath with appellant is not mentioned. The death certificate of Nirmala Devi @ Sundri also does not contain any entry with respect to her relationship with Dina Nath. He further contended that there is no admission in the cross-examination of the witnesses examined by respondents with respect to the relationship of Nirmala Devi @ Sundri with Dina Nath. Thus, he contended that appellant has failed to establish that Dina Nath was his maternal grandfather.

13. He further contended that Dina Nath has validly executed the Will dated 11.02.1985 in favour of respondents no1. To 5 which has been duly proved by way of evidence brought on record by respondents. Thus, appellant has no right, title or interest to the suit property.

14. I have duly considered the aforesaid contentions.

15. The entire case of the plaintiff-appellant is based on the fact as to whether he is proved to be the grandson of deceased-Dina Nath or not. As per the case of the plaintiff, late Dina Nath had six daughters i.e. defendants-respondents and his mother Nirmala Devi @ Sundri. In order to establish his case, plaintiff-appellant has produced both oral as well as

documentary evidence. He has examined his father Siya Nand as PW-1. As he happens to be the father of plaintiff-appellant so certainly he is an interested witness and much weight cannot be attached to his testimony. He has examined Om Parkash as PW-2. Though in his examination in chief, he has claimed himself to be the relative of Dina Nath. But, in the cross-examination, he has not been able to tell the name of the grandfather of Dina Nath. He also could not tell how many brothers Dina Nath father's had. He could not tell the name of father-in-law of Dina Nath. He also could not tell the name of the wife of Dina Nath. He has projected a new story that Dina Nath had six daughters and one son, who has died. It is not even the case of the plaintiff-appellant that Dina Nath also had any son. So, no reliance can be placed on the statement of such a witness. PW-3 Baljit Singh, Statistical Clerk, office of Civil Surgeon, Ambala has simply proved the birth certificate of the plaintiff Ex.PW3/A and the birth certificate of Nirmala Devi @ Sundri. But, in the cross-examination, he admitted that he does not know Urdu. HE also deposed that he has no knowledge about the original register. He also could not tell as to whose name is written in the column of name and the name of the girl mentioned in the certificate ExPW3/B is not clearly legible. PW-4-Roshan Lal is from the family of Dina Nath. He has supported the case of the plaintiff. But, in the absence of documentary evidence which could have been produced, this oral statement cannot advance the case of the plaintiff. Plaintiff himself has appeared into the witness box as PW-5 to support the case set up by him in the plaint.

16. Now, let us divert to the documentary evidence. The main

document is the birth certificate of Nirmala Devi @ Sundri Ex.PW3/B. As already mentioned, PW-3 Baljit Singh has proved this document and admitted that he does not know to read Urdu. He has admitted that the name of the girl child mentioned in this certificate is not legible. If that is so, how the certificate Ex.PW3/B can be connected to Nirmala Devi @ Sundri particularly when it is an admitted fact that all the five respondents-defendants are also the daughters of Dina Nath. Plaintiff has not produced the birth certificates of the remaining daughters of Dina Nath in order to show that Dina Nath had six daughters, the plaintiff could have produced the birth certificates of all the six daughters of Dina Nath. But, the plaintiff has only produced the birth certificate Ex.PW3/B which shows that a girl child has born to Dina Nath on 22.06.1941. But, the name of the child mentioned in the certificate is not legible. So, this certificate is not connected to Nirmala Devi @ Sundri, the mother of the appellant.

17. Ex.P3 is the copy of the *Bahi* writing which is alleged to have been prepared at the time of the marriage of appellant. It shows that Pandit Dina Nath has given Shagun (Nanakshak) of Rs. 101 in the marriage of appellant. In this entry also this fact is not mentioned that Dina Nath was the maternal grandfather of the appellant. Rather, it is mentioned as under:-

“Pt. Dina Nath, Tarsouli Nanke.”

Word 'Nanke' used in this entry denotes the member belonging to the maternal family of the appellant. It could not establish the exact relationship of the appellant with Dina Nath.

18. There is no clear cut admission that Nirmala Devi @ Sundri was the daughter of Dina Nath in the cross-examination of DW-2 Hari Ram, ex-sarpanch of Village Tasrouli. Rather, in his examination in chief he has categorically stated that Dina Nath had five daughters namely Jawala Devi, Kaushalya Devi, Daya Rani, Saroj Bala and Raj Rani and he had no son. DW-3-Jasbir Singh has also stated that except the defendants, Dina Nath had no issue. In the cross-examination of DW-3 Jasbir Singh that the elder daughter of Dina Nath has died in young age is only a hearsay evidence as he has said that somebody has told him so. Consequently, the appellant has not been able to establish that Nirmala Devi @ Sundri was the daughter of deceased-Dina Nath and Dina Nath was his maternal grandfather.

19. As far as the valid execution of the Will Ex.P2/DW1/A is concerned, the defendants have examined Hari Kant Sharma, the scribe of the Will. They also examined Hari Ram, ex-sarpanch, the attesting witness of the Will executed by deceased Dina Nath in favour of the respondents. They have faced the lengthy cross-examination. But, their testimonies have gone unshaken. When, the plaintiff has not been able to establish that Nirmala Devi @ Sundri was one of the daughter of Dina Nath, so absence of her reference in the Will cannot be considered to be a suspicious circumstance. PW-4 Roshan Lal has admitted in the cross-examination that deceased Dina Nath used to sign in Urdu. He has identified the signatures of Dina Nath on the Will dated 11.02.1985. So, even the witness examined by the plaintiff has certified the signatures of Dina Nath on the Will Ex.P2/DW1/A. DW-2 Hari Ram, the attesting

witness of the Will has categorically deposed that at the time of execution of the Will, deceased-Dina Nath was in disposing estate of mind. No evidence to the contrary could be adduced by the plaintiff-appellant. Thus, the execution of the Will dated 11.02.1985, Ex.P2/DW1/A by deceased-Dina Nath in favour of the respondents-defendants is fully established. Consequently, the appellant-plaintiff cannot claim himself to be the owner to the extent of 1/ 6th share in the suit property.

20. Thus, I have no reason to differ with the concurrent findings recorded by the learned Courts below.

21. Consequently, no question of law, much less, the substantial question of law arises in the present appeal.

22. Therefore, the present appeal being devoid of merits, is hereby dismissed with no orders as to costs.

August 23, 2016

s.khan

(DARSHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No