

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

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Regular Second Appeal No.464 of 2016 (O&M)
Date of Decision: February 09, 2016

Brahmo and another

...Appellants

Versus

Balwan (deceased) through his LRs

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. B.S. Bedi, Advocate
for the applicants-appellants.

AUGUSTINE GEORGE MASIH, J.

CM No.1345-C of 2016

Prayer in this application is for exemption from filing the fair true typed copy of judgment and decree dated 14.05.2013 passed by learned Civil Judge (Junior Division), Rohtak and judgment and decree dated 06.11.2015 passed by the learned Additional District Judge, Rohtak and from filing the certified copy and fair typed copy of ground of appeal before First Appellate Court.

Application is allowed.

Exemption from filing the true typed copy of judgment and decree dated 14.05.2013 passed by learned Civil Judge (Junior Division), Rohtak; judgment and decree dated 06.11.2015 passed by the learned Additional District Judge, Rohtak and from filing the certified copy and fair typed copy of ground of appeal before First Appellate Court, is granted subject to just exceptions.

RSA No.464 of 2016

Challenge in this appeal is to the judgment and decree dated 14.05.2013 passed by the Civil Judge (Junior Division), Rohtak, whereby

they are owners in possession of 2/6th share of the property as detailed in para 1 of the plaint after declaring mutation No.2651 as illegal, null and void as well as declaring the Will dated 13.06.1996 of Mange Ram, husband of appellant No.1 and father of appellant No.2 in favour of respondent-Balwan son of deceased Mange Ram as illegal, null and void and not binding upon the rights of the appellants-plaintiffs, stands dismissed, appeal against which preferred by the appellants-plaintiffs has been dismissed by the Additional District Judge, Rohtak, on 06.11.2015.

2. It is the contention of learned counsel for the appellants that the due execution of the Will by Mange Ram has not been proved. He contends that the alleged Will dated 13.06.1996 is a result of fraud and misrepresentation. He contends that respondent-defendant had obtained the thumb impression of Mange Ram by telling him that it was required for exemption from *lagaan* charges of the agricultural land and accordingly asked to put signatures/thumb mark on some blank papers on which the Will has ultimately been prepared. He asserts that Mange Ram never executed the Will for disposal of the property nor did he appear before the Sub Registrar or thumb mark the same before him and the Will was never read over to him. He contends that the wife and the daughter, who are appellants 1 and 2 respectively, have been deprived of their right of inheritance but no plausible reason or explanation has been given/mentioned in the Will. He asserts that Mange Ram was an old, infirm and unstable person and because of ill health, he was unable to understand the nature of the document which was got executed by him as he was not of sound mind. He contends that the date of execution of the Will is

13.06.1996 and the date of death of Mange Ram is 17.06.1996 which is merely after four days. All these circumstances shrouds the Will with suspicion and, therefore, the Court should be extra cautious as the responsibility is cast upon the Court to dispel the suspicion and fully satisfy itself with regard to the due execution by the testator and validity of the Will. In support of his contention, he placed reliance upon the judgment of the Supreme Court in *Gurdial Kaur and others Versus Kartar Kaur and others 1998(1)PLJ 685* and judgments of this Court in *Balkar Singh Versus Gurnam Singh etc. 1982 CLJ (C&Cr)* and *Nimbo and others Versus Satyabir Singh 1995(1) Civil Court Cases 224*. He, on this basis, contends that the judgments and decree passed by the Courts below cannot sustain and deserve to be set aside.

3. I have considered the submissions made by learned counsel for the appellants and with his able assistance, have gone through the impugned judgments.

4. The facts in this case are not in dispute that the appellants-plaintiffs are widow and daughter of deceased Mange Ram and respondent-defendant-Balwan, the son. It is not in dispute that appellant No.2-Meena Devi (daughter of deceased Mange Ram) is happily married and residing in her matrimonial house and Balwan was the only son. The stand of the appellants is that the due execution of the Will has not been proved but the same cannot be accepted as the respondents have examined DW-1 Ram Chander, who was the attesting witness of the Will Exhibit D-1. The said Will is a registered document which has been produced on record.

The presumption with regard to the genuineness of the Will and the truth

thereof is attached thereto which is although rebuttable and, therefore, the onus lies upon the appellants-plaintiffs to assert and prove their stand that deceased Mange Ram was misguided and misled into putting his thumb impression on the blank papers on the pretext of getting the *lagaan* exempted of the agricultural land. There is nothing on record indicating so. The assertion is that Mange Ram was of feeble mind due to old age and ill health and was unable to understand the nature and implications of the document which was being got executed by him. This assertion again is a bald pleading as it has not been supported by any evidence which would indicate that he was of ill health and was suffering from some disease. No medical record has been produced. Mere assertion in this regard cannot be accepted. Similar is the position with regard to the assertion that the Will was not executed with free, disposing mind without any coercion or influence and was a result of fraud. Merely because executor-Mange Ram died on 17.06.1996 would not create suspicion with regard to the authenticity of the Will, especially when there is no evidence on record indicating either his ill health or that he was not in a sound and disposing mind. In the absence of any evidence, none of the contentions and assertions made by the counsel for the appellants, can be accepted.

5. It would not be out of way to mention here that respondent-defendant-Balwan was the only son of deceased Mange Ram and in the Will, it has been clearly recited that appellant No.2-Meena Devi is a happily married daughter of Mange Ram and hence, he wanted to bequeath his property in favour of his son, who was taking care of him in his old age. The witness, who had appeared for the plaintiffs, have admitted

in their cross-examination that Balwan was in possession of the suit land and had been cultivating the same during the lifetime of Mange Ram. This shows that Mange Ram was being taken care of by his son Balwan, cultivating his land and naturally was inclined to execute a Will in his favour, specially when there is nothing on record that there were differences or any ill will between the father and son.

6. Another aspect which cannot be ignored is that Mange Ram died on 17.06.1996, whereas the suit has been filed on 05.09.2003. This shows that the appellants-plaintiffs were obvious of the reason that the Will had been validly executed. Had there been doubt with regard to its due execution, especially when it is a registered Will in favour of Balwan, who was in possession of the land and had been all through cultivating the same even during the lifetime of Mange Ram, the challenge to the Will would have been initiated at a much earlier date. The Will, therefore, cannot be said to be shrouded with any suspicion, especially when there is no evidence on record which would indicate towards the same. The principles laid down in the judgments on which reliance has been placed by the counsel, cannot be disputed with but in the light of the fact that there is no evidence on record which would indicate *muchless* establish the suspicious circumstances with regard to the execution of the Will, the findings as recorded by the Courts below cannot be faulted with.

7. Both the Courts below have returned concurrent findings after properly appreciating the pleadings and the evidence brought on record by both the parties and the same cannot be interfered with as there is no perversity or illegality in the same.

8. No substantial question of law is involved in the present appeal. Therefore, finding no merit in the appeal, the same stands dismissed.

9. In the light of the dismissal of the appeal, the application for stay i.e. CM No.1344-C of 2016, stands disposed of as infructuous.

February 09, 2016
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE