

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 3538 of 2015 (O&M)

Date of Decision: 14.03.2016

Maha Singh Dalal

... Appellant(s)

Versus

Anita and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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

Present: Mr. Ajay Chaudhary, Advocate
for the appellant(s).

Shekher Dhawan, J.

Present regular second appeal against concurrent findings of facts recorded by both the Courts below, whereby suit of the plaintiff for declaration and permanent injunction was dismissed by the Court of first instance and first appeal, filed by the plaintiff, was dismissed by the Court of learned Additional District Judge, Bhiwani.

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

Relevant facts for the purpose of decision of the present appeal that Maha Singh has filed suit for declaration that allotment

letters dated 14.8.1988, 26.9.1994 & 26.12.2003 and registered conveyance deeds dated 24.9.2004 & 28.4.2004, registered with the office of Sub Registrar, Bhiwani are *Benami* and executed for the exclusive benefit of the plaintiff and therefore, created no title in favour of Smt. Krishna Devi, deceased wife of the plaintiff. Anita, present defendant and Vijay, deceased son of the plaintiff were only *Benamidars*. As per plaintiff, he served in the Indian Army and retired in October, 1988 and after his retirement, he carried on business of Transport in Korba in the State of Chattisgarh. The said business was closed on 28.8.1999. On 14.8.1998, plaintiff had purchased plot No. K-9, Bharat Nagar, Bhiwani for consideration of ₹ 6,868/- from defendant No.3 in the name of his wife Smt. Krishna Devi for him. The payment was made by him from his own earnings. However, the plot was purchased in the name of his wife to avoid any procedural difficulty. Plaintiff had constructed a residential house in the year 1989 and after retirement he started living in the said house along with his wife and two children. As per plaintiff, he had also purchased plot No. K-6 on 26.9.1994 in the name of his daughter Anita for consideration of ₹ 6,700/- for his exclusive benefit and payment was made by him. Another plot No. K-8 was purchased by him on 26.12.2003 for a sum of ₹ 9,300/- in the name of his son Vijay. Construction was raised on plot No. K-8 in the year 2000. On 8.8.2004, Vijay, son of the plaintiff, died in motor vehicular accident and Anita, defendant, visited the house of the plaintiff. Smt. Krishna Devi, wife of the plaintiff, lost her mental

balance. Anita took her mother to her matrimonial home. On 18.3.2005, Anita, by presenting a fake woman in place of her mother, got prepared a forged Will and on 21.3.2005 the same was registered in the office of Sub Registrar, Bhiwani in connivance with the staff of the office. After seven months of registration of the Will, Smt. Krishna Devi died and Anita started proclaiming herself as owner of the suit property on the basis of forged Will. Now, Anita is adamant on illegally dispossessing the plaintiff from the suit property and as such necessity of the suit.

Defendant contested the suit by taking the plea that present suit is barred as per the provisions of Benami Transaction (Prohibition) Act, 1988. More so, plaintiff is estopped to file the suit by his act and conduct as he had taken loan from the bank and he himself had deposited the title deed of the disputed property in favour of the bank. The property, mentioned as Unit No. K-8, was in the name of Vijay, brother of the answering defendant and after his death on 8.8.2004, the same devolved upon Smt. Krishna Devi. The property, mentioned as Unit No. K-9, was in the name of Smt. Krishna and she was the owner. Smt. Krishna had executed a Will dated 21.3.2005, which was duly registered and after her death, Anita had become owner of the property mentioned as Unit No. K-8 & K-9. Relations between Smt. Krishna and plaintiff remained strained during life time of Smt. Krishna as plaintiff was interested in keeping some other lady and Smt. Krishna had filed a civil suit in the year 2005 to restrain the plaintiff to re-marry again during her life time. Plaintiff was restrained from

remarrying again. The plot in question was purchased by Smt. Krishna Devi and not by the plaintiff. Smt. Krishna Devi was having her own independent income from dairy farming. Defendant denied that Smt. Krishna Devi lost her mental balance. The Will in question was duly executed and registered at Bhiwani and prayed that suit be dismissed.

Defendant No.2 also filed written statement with the plea that suit of the plaintiff is liable to be dismissed.

On these facts, issues were framed by the Court of first instance and the parties were asked to lead their respective evidence. The Court of first instance, after appreciating the entire evidence, dismissed the suit of the plaintiff. The Court of first instance observed that testator of the Will was of sound disposing mind and she had suffered Will of her own and Will dated 18.3.2005, registered on 21.3.2005, was a valid Will. The Court of first instance also observed that there is nothing on the file to show that plaintiff had purchased the property in the name of his wife and his source of income was not traceable at all and dismissed the suit of the plaintiff. First appeal having been filed by the plaintiff was also dismissed by the Appellate Court and as such regular second appeal before this Court.

Learned counsel for the appellant took the plea that both the Courts below have completely ignored the fact that appellant Maha Singh was in possession of the suit property. More so, it had come in the statement of PW.11-Ram Chander Sharma that money was available with the plaintiff for the purchase of these properties. More so, Anita and Vijay were minor at the time of purchase of the property and

payment of money was made by plaintiff himself. As regard to execution of Will dated 18.3.2005, on that day Smt. Krishna was admitted in Chopra Nursing Home, Bhiwani as she was undergoing treatment from 15.3.2005 to 29.3.2005 as indoor patient. There was no question of her going to the office of Sub Registrar for registration of Will on 21.3.2005 and the Court below has completely ignored these facts while returning the findings and the same resulted into erroneous findings. The said findings be set aside and appeal be accepted.

Having considered the submissions made by learned counsel for the appellant and having gone through record of the case, this Court is of the considered view that all these facts have already been considered by both the Courts below and concurrent findings of facts have been recorded. The Will dated 18.3.2005 executed by Smt. Krishna Devi was a valid Will and the same has been validly executed and registered on 21.3.2005. The said document was proved on the basis of statements of DW.1 to DW.3. There was nothing on the file that mental condition of Smt. Krishna Devi was not good at the time of execution of the Will, rather she was of sound disposing mind. The Courts below have already recorded concurrent findings of facts that plaintiff failed to prove that he had money for the purchase of these plots and the property in dispute was the property of defendant No.1. Both the Courts below have already discussed the entire evidence in detail and returned the findings that Will was duly proved and there was nothing on the file that property was purchased with the funds available with the plaintiff. The said concurrent findings of facts do not require

any interference by way of present regular second appeal. There is no substantial question of law involved in the present appeal.

As per view taken by Hon'ble the Supreme Court in ***Deity Pattabhiramaswami v. S. Hanymayya and Others AIR 1959 SC 57***, the provisions of Section 100 CPC are clear and unambiguous. There is no jurisdiction to entertain a second appeal on the ground of finding of fact. As per view taken by Hon'ble the Apex Court in ***Commissioner, Hindu Religious & Charitable Endowment v. P. Shanmugama & Others JT 2005(1) SC 201*** and ***Biswanath Ghosh (Dead) by LRs and Others v. Gobinda Ghosh alias Gobindha Chandra Ghosh & Others AIR 2014 SC 1582***, second appeal cannot be entertained if there is no substantial question of law involved therein.

In the present regular second appeal, there is no substantial question of law involved, rather both the Courts below have already appreciated the entire evidence. Hence, the present appeal is not maintainable as per the provisions of Section 100 of the Code of Civil Procedure, 1908.

In view of above, present regular second appeal stands dismissed.

**(Shekher Dhawan)
Judge**

March 14, 2016

"DK"