

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 4021 of 2015 (O&M)
Date of Decision : 14.12.2016

Mahender Singh and another

....Appellants

Versus

Kesh Wati and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Shiv Kumar, Advocate
for the appellants.

Surinder Gupta, J.

Under challenge in this appeal is Will dated 09.09.1999 executed by Har Lal. Plaintiffs-appellants are the sons of Har Lal and have alleged that Will is the result of undue influence.

2. Har Lal had six sons, namely, Mahender Singh, Dharambir (plaintiffs), Bed Ram, Hoshiar, Bijender and Lekh Ram. Vide Will dated 09.09.1999, he bequeathed his property in favour of defendants no. 1 to 3, who are wives of his three sons, namely, Bed Ram, Hoshiar and Bijender. It is not disputed that Har Lal and Mam Raj were two brothers. Mam Raj transferred his property in favour of sons of plaintiff no. 1 vide relinquishment deed dated 06.10.2003. One plot of 2000 sq. yards situated in Harkesh Nagar, Delhi, owned by Har Lal is in possession of plaintiff no. 2. Defendants no. 2 and 3 i.e. wives of Hoshiar and Bijender have also transferred their share in suit land in favour of sons of plaintiff-appellant no. 2.

3. Plea of plaintiffs is that property in the hands of Har Lal was ancestral property and defendants no. 1 to 3 got Will dated 09.09.1999 executed from Har Lal in their favour by exerting undue influence.

4. Plea of plaintiffs that the suit property was ancestral property in the hands of Har Lal failed. While appearing as PW-1, plaintiff no. 1- Mahender Singh claimed settlement of his property during his lifetime by their father Har Lal and observations based on his statement have been quoted by learned Civil Judge (Junior Division), Faridabad in para 16, which are extracted as follows:-

“16.In his cross-examination the witness deposed that Mam Raj his uncle has relinquished his share in favour of his sons and children of defendants no. 1 to 3. He also stated that his brother Dharambir is residing at Harkesh Nagar, Delhi. It has been further deposed by the plaintiff that his father Har Lal, in a family settlement had relinquished his share in favour of defendants no. 1 to 3 through a Will. In the same family settlement the property of Shri Har Lal situated at Harkesh Nagar was given to Dharambir i.e. plaintiff no. 2. The property of his uncle Mam Raj then fell into share of the sons of plaintiff no. 1.”

5. Learned counsel for appellants has argued that the Will executed by Har Lal was not proved to be a legal and valid Will. One of the marginal witness of the Will, namely, Bhim Singh while appearing as PW-2 has stated that this Will was not read over and explained to him and his signatures were obtained by defendants no. 1 and 2 under good faith. He has also stated that this Will was not executed as per sweet will and consent of Har Lal. Ist Appellate Court took note of this statement of Bhim Singh and and discarded it with the observations as follows:-

“12.However, once his cross-examination is gone through, this witness stands falsified and his testimony rather goes to show that he is trying to support the case of plaintiffs on false counts being co-villager. During cross-examination, he admitted that he is on visiting terms with plaintiffs and he visits Mahender plaintiff regularly and they belong to the same family and their houses are adjacent. He stated that the Will was got scribed in the tehsil compound and was got scribed by Harlal himself and Harlal had asked him to attest the Will as a witness. This part of his testimony falsifies his version in the examination in chief when he stated that defendants obtained his signatures in good faith on the Will, whereas he attested the Will on the asking of the testator. He admitted his signatures on the Will at point 'A', thumb impression of the testator at point 'B' and signatures of another attesting witness Jaipal at point 'C'. In this manner, he has tried to resile from his attestation on the registered Will, but he cannot be allowed to hold the parties at ransom by falsely supporting the claim of the plaintiffs after the death of Harlal.”

6. The Will is a registered document and attesting witness appeared alongwith testator before Sub-Registrar and signed the Will. C.S. Sharma, Advocate, who is also a marginal witness of the Will has appeared as DW-3 and fully supported the Will and categorically stated that it was

executed by Har Lal in favour of defendants no. 1 to 3. The Will was read over and explained to testator and witnesses, who signed the same and testator executed it of his free will. Har Lal appeared to be an intelligent person who had settled all his sons during his life time. Property of his brother Mam Raj was transferred in the name of sons of plaintiff no. 1. Plaintiff no. 2 was given one plot measuring 2000 sq. yards in Harkesh Nagar, Delhi, over which construction is also existing from which he is deriving huge rental income. Defendants no. 1 to 3 are daughters-in-law of Har Lal. While defendant no. 1 is widow, defendants no. 2 and 3 have relinquished their share in favour of sons of plaintiff no. 2. Mahender Singh plaintiff no. 1 has admitted that plot in Delhi is worth crores of rupees and that property fell to the share of Dharambir (plaintiff no. 2) in a family settlement. He also admitted that property of Mam Raj his uncle was transferred in favour of his sons and the Will by Har Lal in favour of defendants no. 1 to 3 was executed under a family settlement. On perusal of statement of plaintiff no. 2 himself, Ist Appellate Court rightly concluded that he himself has given the reasons for execution of the Will by Har Lal in favour of defendants no.1 to 3.

7. In view of the statement of plaintiff no. 2, the plea of plaintiffs that the Will was got executed from Har Lal under undue influence was rightly discarded by Courts below. It appears that plaintiffs have admitted the Will executed by Har Lal and this is why they purchased, in name of sons of plaintiff no. 2, the share inherited by defendants no. 2 and 3 under the Will treating them owner of the land. In case the plea of plaintiffs is accepted that the Will was not a genuine one, above sale of land of their share by defendants no. 2 and 3 will be rendered invalid, void and illegal - a

proposition which plaintiffs will not like to face by getting the Will of Har Lal declared as illegal and invalid. In that eventuality their share will be reduced to meagre 1/6th and plaintiff no. 2 will have also to account for the property in Delhi he got under settlement. It appears that avarice, greed and lust to have the entire property of his father and to deprive their widowed sister-in-law, defendant no. 1, have led plaintiffs to indulge in this litigation so as to pressurize her to come to terms and relinquish her right in suit property.

8. On merit, plaintiffs have no case to challenge the Will of their father, who has bestowed a lot of benefits on them.

9. On perusal of judgments of Courts below, I find no legal or factual infirmity therein calling for interference. No substantial question of law, requiring determination, arises in this appeal, which has no merit.

Dismissed.

December 14, 2016
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/Reasoned

Yes/No

Whether Reportable

Yes/No