

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 3098 of 2014 (O&M)

Date of Decision: 11.05.2016

Manjit Kaur and Others

... Appellant(s)

Versus

Bhajan Singh 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. Jaideep Verma, Advocate
for the appellant(s).

Shekher Dhawan, J.

Present regular second appeal, filed by plaintiff Nos. 6, 2 & 3, against judgment & decree dated 28.11.2009, passed by learned Civil Judge (Senior Division), Rupnagar as well as judgment & decree dated 31.7.2013, passed by learned Additional District Judge, Fast Track Court, Rupnagar, whereby suit filed by the plaintiffs for declaration and appeal filed by the appellants were dismissed.

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

Relevant facts of the case that plaintiff Amrik Singh and

others had filed suit for declaration against Bhajan Singh. As per plaintiffs, suit property was originally owned by Ram Chand son of Assa Ram, who died on 2.3.2002. The said Ram Chand was not having cordial relations with his son Bhajan Singh and as such deprived him of his estate on the basis of Will dated 29.11.1999. After the death of Ram Chand, a family settlement/compromise was effected between the parties to the suit and on the basis of said compromise, the landed property was distributed amongst the sons, whereas the shops were agreed to be given to the daughters and widow of Ram Chand for their maintenance. The said compromise was duly recorded and signed by the parties on 31.10.2002. Mutation No. 292 was pending adjudication. However, the revenue authorities discarded the Will and compromise. Plaintiffs requested the defendant to admit the Will and compromise but to no avail and as such necessity of the suit.

Defendant contested the suit on the ground that no family settlement/compromise was effected between the parties and the same is a forged document. Defendant, being the natural son of Ram Chand, is having equal share in the suit property. The Assistant Collector Ist Grade, Ropar has also given equal share to the defendant in the estate of Ram Chand. As per order dated 31.10.2002, defendant had purchased the land measuring 5 marlas from Ram Chand and his brother Ram Murti son of Assa Ram on the basis of registered sale deed dated 22.12.1992 and prayed for dismissal of the suit.

On these facts, the Court of first instance settled the issues and parties were put to trial. Both the parties led their respective

evidence and the Court of first instance, after appreciating the entire evidence, dismissed the suit of the plaintiffs. First appeal was filed by plaintiffs No.6, 2, 3 & 4 and the same was dismissed by the first Appellate Court and as such present regular second appeal before this Court.

Learned counsel for the appellants submitted that the Courts below have misread and misappreciated the evidence. Infact, Will dated 29.11.1999 has been duly proved on the file. This fact was admitted by respondent No.1-Bhajan Singh in his cross-examination that his relations were strain with his father in the year 1996-97 but he was not aware of execution of any Will dated 29.11.1999. His father Ram Chand died on 3.2.2002 and prior to that he was hale and hearty.

Learned counsel for the appellants also submitted that execution of Will dated 29.11.1999 was also proved as per statement of DW.2-Ram Murti, brother of Ram Chand, who had identified signatures and photograph of Ram Chand on the Will. Learned counsel for the appellants submitted that as per provisions of Section 68 of the Indian Evidence Act, 1872 (hereinafter referred to as "the Act") regarding proof of Will, it is sufficient to satisfy the conscience of the Court that if the Will contained signatures of the attesting witness and scribe and the same was duly registered with signatures of the Registering Officer. This is sufficient evidence to satisfy the conscience of the Court that Will was duly executed. On this point, reliance has been placed upon the judgment rendered by Hon'ble the Apex Court in ***Pentakota Satyanarayana and Others v. Pentakota Seetharatnam and***

Others 2005(4) RCR (Civil) 615.

More so, the averments of the plaintiff are not specifically denied but in this case there was no specific denial in the written statement and the Court below completely ignored this fact. On this point, reliance was placed upon the judgment rendered by Hon'ble the Apex Court in ***Asha v. Pt. B.D.Sharma University of Health Sciences and others 2012(3) Civil Court Cases 814 (SC)*** and view taken by this Court in ***Jaswinder Singh v. Dhir Singh and Another 2012(4) Civil Court Cases 014 (P&H)*** and also by Andhra Pradesh High Court in ***2012(4) Civil Court Cases 689 (AP)***. More so, much reliance has been placed upon sanctioning of mutation but it is settled law that mutation does not confirm title of the party.

Learned counsel for the appellants also submitted that first Appellate Court fell in error while recording the finding that there is no pleading by the plaintiffs that Ram Chand had executed Will on 29.11.1999, whereas this fact has been pleaded and it has also come in the affidavit (Ex.PW.1/A) of plaintiff No.3-Harmit Singh and the Courts below completely ignored this fact, which resulted into erroneous findings and the said findings are liable to be set aside and present appeal be accepted.

Having considered the submissions made by learned counsel for the appellants; appraisal of the record of the case and the case laws referred to and relied upon by learned counsel for the appellants, this Court is of the considered view that the facts of the aforesaid case laws are distinguishable from the facts of the present

case because as per the Courts below, the Will has not been proved and the case has been decided on the basis of material and evidence available on the file and not merely on the basis of sanction of mutation and the present appeal is against concurrent findings of facts having been recorded by the Courts below. The Courts below have already examined the Will (Ex.P1) and recorded finding that Will was not duly proved by the plaintiffs for more than one reasons. Firstly, undisputedly, the burden to prove the Will was upon the propounder of the Will and all the suspicious circumstances were required to be removed. As per PW.1-Harmit Singh, his father was unwell before his death. It has also come in the statement of PW.1 that defendant-Bhajan Singh had also attended "bhog ceremony/rasam pagri" of his father. First and foremost reason for disbelieving the Will is that there was no reason for Ram Chand to exclude his real son and to execute the Will. Mere strained relations between Ram Chand and his son Bhajan Singh for some time cannot be taken as a ground so as to go to the extent of exclusion of his son. The statement of PW.1-Harmit Singh that Bhajan Singh also attended the bhog ceremony of Ram Chand shows that there were some differences between father and son for some time only but that was not a ground for exclusion of the natural succession and propounder of the Will has not been able to remove these suspicious circumstances. More so, plaintiffs failed to examine the scribe of the Will, stamp vendor or any other witness except Kailash Chand, Lamberdar. The said attesting witness Kailash Chand has also not deposed that relation of Ram Chand and Bhajan Singh were not cordial

and both the Courts below recorded the concurrent findings of facts on that point and there is no ground to interfere in the said findings and 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 view of the above, present appeal is not maintainable as per the provisions of Section 100 of the Code of Civil Procedure, 1908 and the same stands dismissed.

(Shekher Dhawan)
Judge

May 11, 2016
"DK"