

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

RSA-425-2014(O&M)

Date of decision : 20.01.2016

Nand Kumar Sabharwal

... Appellant

Versus

Joginder Kumar and another

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Sukhdeep Parmar, Advocate
for the appellant.

REKHA MITTAL. J.

The present regular second appeal has been preferred to assail the concurrent findings recorded by the Courts below whereby the suit filed by the appellant / plaintiff for possession of the suit property has been dismissed by the learned trial Court and the judgment and decree passed by the trial Court has been affirmed in appeal.

The facts, in brief, are that as per case set up by the appellant/ plaintiff, Smt. Meerwali @ Meera Bai widow of Harbans Lal son of Ramji Lal was owner of agricultural land detailed in the head note of the plaint. Ashok Kumar, respondent No.2, son of Meerawali used to look after the said land being son of the owner. On 08.07.2001, Ms.Meerawali executed a Will in favour of the appellant out of her free will and in sound disposing mind, thus, the appellant has become owner of the suit land on the basis of testamentary succession.

Ashok Kumar respondent No.2, the real brother of the appellant in connivance with their brother Joginder Kumar respondent No.1 got his name inserted in the column of cultivation in the revenue record. In the last week of April, 2007, the appellant demanded accounts of yield but respondent No.2 refused to give the accounts and claimed that respondent No.1 is owner of the land in dispute in view of mutation No.2575 entered upon the basis of Will. The alleged Will on the basis of which mutation No.2575 was sanctioned, has never been executed by Smt. Meerawali and the same does not bear thumb impression / signatures of his mother. The Will in favour of the appellant is the last Will executed by the deceased, therefore, mutation No.2575 in favour of respondent No.1 does not confer any right upon him.

The respondents/defendants filed written statement raising preliminary objections in regard to suit being barred by limitation and the appellant having no locus standi to file the suit. It was alleged that the Will propounded by the appellant is forged, fabricated and surrounded by suspicious circumstances. Smt. Meerawali executed a Will on 16.04.1992 in favour of respondent No.1 because in a family settlement, the suit land came in the share of respondent No.1. Nand Kumar plaintiff and heirs of Rattan Kumar including Dheeraj Kumar, the witnesses of the alleged Will have already sold their entire land and now they have an evil eye on the suit land. The Will dated 16.04.1992 was duly registered, a valid and last Will executed by deceased Meerawali. All other material averments of the

plaint have been denied with a prayer of dismissal of the suit.

The learned trial Court, on the basis of pleadings, issues framed for determination, evidence adduced and after bestowing its thoughtful consideration to the rival submissions made by counsel for the parties decided against the appellant and the Will propounded by the respondents was accepted. The findings recorded by the learned trial Court were affirmed in appeal as the appeal filed by the present appellant was ordered to be dismissed by the Additional District Judge, Panipat.

Still feeling dissatisfied, the present appeal has been preferred by the appellant / plaintiff Nand Kumar.

Counsel for the appellant would contend that the findings given by the courts below in accepting the Will propounded by respondent No.1 are illegal and liable to be set aside. It is further argued that the appellant filed an application under Order 41 Rule 27 read with Section 151 CPC to examine the attesting witnesses of the Will dated 08.07.2001 propounded by him but the same was wrongly rejected by the Court in appeal. It is urged that the judgments passed by the Courts below are liable to be set aside after affording an opportunity to the appellant to prove the Will dated 08.07.2001, the last Will left behind by the deceased.

I have heard counsel for the appellant, perused the records and find no merit in the appeal.

The appellant claimed ownership to the suit property on the basis of Will purported to be executed by the deceased on 08.07.2001

thereby excluding the other Class I heirs of the deceased to inherit her estate. The learned trial Court framed a specific issue in regard to entitlement of the appellant to the claimed relief of possession. The appellant for the reasons best known did not examine the scribe or the attesting witnesses of the Will propounded by him. The appellate Court in para 15 of the judgment has noticed that the case remained pending for a period of about two years for adducing evidence by the appellant and he availed nine effective opportunities for the purpose but during this period, besides his own statement, he did not produce any evidence. The Court has also noticed that on the Will Ex.P1 propounded by the appellant, the same does not bear signatures of SM Manga Singh, one of the alleged attesting witness of the Will. Counsel for the appellant is not in a position to challenge correctness and legality of observation made by the appellate Court for rejecting his application for additional evidence, either in view of the provisions of Order 41 Rule 27 CPC or on some other legal ground. There is nothing on record to suggest that the case of the present appellant is in any manner covered within the preview of Clause (a) or / and Clause (aa) of Rule 27 of Order 41 in order to find any fault in the order passed by the appellate Court rejecting his prayer for additional evidence to prove Will Ex.P1. In this view of the matter, contention of the appellant that the judgments passed by the Courts below are liable to be set aside by allowing him an opportunity to adduce additional evidence is misconceived and merits rejection.

Counsel for the appellant has not made any submissions to find any error much less illegality in the consistent findings that the respondents have been successful to prove that Meerwali, mother of the parties executed registered Will dated 16.04.1992 in favour of respondent No.1 on the basis whereof, mutation No.2575 was sanctioned in his favour. As the appellant failed to prove the Will propounded by him in accordance with provisions of Section 68 & 69 of the Indian Evidence Act when on the contrary, the Will propounded by respondent No.1 has been proved to the satisfaction of the Court to be the last testament left behind by the deceased, neither any substantial question of law, as has been sought to be raised in the grounds of appeal or otherwise, arises for adjudication nor there is any error much less illegality in the findings recorded by the Courts below.

For the foregoing reasons, the appeal sans merit and the same is accordingly dismissed in limine. No order as to costs.

January 20, 2016.
Davinder Kumar

(REKHA MITTAL)
JUDGE