

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.3195 of 2001 (O&M)
Date of decision: 01.09.2017

Ratna and others

... Appellants

Vs.

Kamla and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. S.N. Yadav, Advocate
for the appellants.

Mr. J.P. Sharma, Advocate
for the respondents.

RAMESHWAR SINGH MALIK, J. (ORAL)

Unsuccessful defendants are in regular second appeal against the concurrent findings of facts recorded by both the learned Courts below, whereby suit for declaration filed by the plaintiff was decreed by the learned trial Court vide its impugned judgment and decree dated 27.07.1996 and first appeal of the defendants was also dismissed by the learned Additional District Judge vide his impugned judgment and decree dated 04.06.2001, upholding the judgment and decree of the learned trial Court.

Brief facts of the case, as noticed by learned first appellate Court in para 2 of the impugned judgment, are that the plaintiff had filed a suit for declaration to the effect that she was owner in possession to the extent of 1/8th

share in the land measuring 3 kanals 9 marlas comprised in khatoni No.32, Khewat No.220 and half share in land measuring 10 kanals 17 marlas bearing khatoni No.250, Khewat No.189 and that the Will No.4 dated 12.04.1979 of deceased Surjan son of Jeessukh in favour of the defendant was illegal, null and void and not binding on her rights on the facts that her uncle Surjan died unmarried and issueless on 25.11.1984. He was owner in possession of the property measuring 3 kanals 9 marlas bearing khatoni No.322, Khewat No.220 to the extent of 1/8th share in Village Dongra Ahir, Tehsil and District Mahendergarh and half share in land measuring 10 kanals 17 marlas bearing khatoni No.250, Khewat No.189 situated in Village Mundia Khera, Tehsil and District Mahendergarh. This land came to said Surjan from his father Jeessukh through inheritance. As such, the land in dispute is ancestral land in the hands of deceased Surjan. It was alleged that Surjan died unmarried and issueless and was residing with her father Kurdia @ Sundia. Her father used to give food and clothes and after the death of her father, she offered food and clothes to Surjan. The defendant being a clever person got Will No.4 dated 12.04.1979 executed and registered in his favour in respect of all moveable and immoveable property from Surjan by enticing him, whereas Surjan was an old man of about 75-80 years and he was not in a position to think his good or bad. The defendant was not related to Surjan Singh at all nor defendant looked after him and provided food to him. Will No.4 dated 12.04.1979 is illegal, null and void and not binding on her rights on the grounds that the suit property was ancestral in the hands of deceased Surjan who was having no right to alienate the same. The parties were bound by agriculture custom prevalent in Ahir community of Mahendergarh district. Surjan was an old man of 75-80 years who was hard of

hearing and also did not keep proper sight and he came to know about the Will, when he went to Patwari to enter mutation of inheritance of the property of deceased Surjan being near collateral of Surjan.

Defendants were put to notice. They appeared and filed their contesting written statement, raising more than one preliminary objections. Plaintiff filed the replication. On completion of pleadings of the parties, the learned trial Court framed the following issues: -

1. Whether the plaintiff is related to Surjan as alleged in the pedigree table given in para No.1 of the plaint? OPP
2. Whether the Will No.4 dated 12.04.1979 is illegal, null and void and paper transaction and accordingly liable to be set aside on the grounds as alleged? OPP
3. Whether the suit is not maintainable in the present form? OPD
4. Whether the plaintiff is estopped from filing the present suit by his act and conduct? OPP
5. Whether the defendant is entitled to special costs u/s 35-A CPC? OPD
6. Whether the suit is time barred? OPD
7. Relief.

With a view to substantiate their respective stands taken in their pleadings, both the parties brought on record their documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial Court came to the conclusion that the plaintiff has duly proved her pleaded case by bringing on record cogent and convincing evidence. On the other hand, defendants-appellants, who set up the

Will and were beneficiaries thereof, could not prove due execution of the Will in accordance with law. Accordingly, suit for declaration filed by the plaintiff was decreed by the learned trial Court vide its impugned judgment and decree dated 27.07.1996. Feeling aggrieved, defendants filed their first appeal, which also came to be dismissed by the learned first appellate Court vide its impugned judgment and decree dated 04.06.2001. Hence this regular second appeal at the hands of unsuccessful defendants.

Heard learned counsel for the parties.

It is a matter of record that the appellants were propounders of the Will dated 12.04.1979. Since the appellants were beneficiaries of the Will, it was for them to prove due execution of the Will in question. However, a bare perusal of the Will Ex.P5, available at page 141 of the lower Court record, would show that the testator Sh. Surjan did not make even a passing reference of the plaintiff, who was admittedly the daughter of his brother. Non-mentioning about the plaintiff, itself would be a suspicious circumstance surrounding the Will. In such a situation, onus would be on the propounders of the Will to dispel such a suspicious circumstance. However, the appellants failed to bring on record any such evidence on the file, which might be found to be sufficient to dispel the abovesaid suspicious circumstance surrounding the Will.

Besides the above, defendants-appellants also failed to prove due execution of the Will in question. Neither any of the attesting witness of the Will was examined in the Court nor due execution of the Will could be proved by the beneficiaries thereof, appellants herein. In such a situation, appellants were bound to fail. That is what has been held by both the learned Courts

below. Even the scribe of the Will was also not produced. Further, the appellants also failed to establish any relationship between them and the testator of the Will.

It does not appeal to reason as to why late Sh. Surjan would execute the Will in question in favour of the appellants, even without mentioning the name of daughter of his brother-plaintiff. It deserves to mention here that the present appellants are the legal representatives of original defendant. Having said that, this Court feels no hesitation to conclude that the learned Courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

Except the Will Ex.P1, there was no other claim put forth by the defendants-appellants, so as to claim ownership of the suit property. Relationship of the plaintiff with testator of the Will has gone undisputed on record. Once the defendant was propounder and beneficiary of the Will, onus would be on him to prove due execution, but he failed to do so for want of sufficient and cogent evidence, as noticed hereinabove. In this view of the matter, no fault can be found with the concurrent findings of facts recorded by both the learned Courts below and the impugned judgments and decrees deserve to be upheld, for this reason also.

Before arriving at his judicious conclusion, learned Additional District Judge rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in the correct perspective. The relevant and cogent findings recorded by the learned first appellate Court in para 17 of the impugned judgment, which deserve to be noticed here, read as under: -

“I do not agree with the learned Sub Judge that the Will is not surrounded by suspicious circumstances. The presence of legatee Surjit at the time of scribing of the Will and registration and becoming an attesting witness shows the keen and active role played by him in obtaining the Will. Such conduct on the part of the beneficiaries shrouds the Will with suspicious circumstances in particular when there is no mutation in the Will as to why the natural heir i.e. respondent was being excluded. The Will was executed in 1979 but the same was disclosed to anyone by the appellant. The testator died in 1984 and in the year 1989 the appellant took out the Will and approached the revenue authorities for entering the mutation in their favour. The mutation Ex.P2 shows that part of the suit land was entered in the name of the appellants measuring 10 kanals 17 marlas in Village Mundia Khera entered on 1.8.1990 and land in village Dongra Ahir vide mutation Ex.D3 was sanctioned on 14.3.1990. It is not known as to why the appellants kept silent for more than five years and why they did not feel necessity for getting the mutation entered. It was obviously because the appellant wanted to keep the Will secret because they were aware that the same was not genuine.”

During the course of hearing, learned counsel for the appellants could not point out any patent illegality or perversity in the impugned judgments and decrees passed by the learned Courts below. He also failed to raise any question of law, much less substantial question of law, which is sine qua non for entertaining any regular second appeal at the hands of this Court,

while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Narayanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (5) SCC 264.**

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since no illegality has been found in either of the impugned judgments and decrees passed by the learned Courts below, the same deserve to be upheld. Present regular second appeal having been found wholly misconceived, bereft of merit and without any substance, must fail. No ground for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

[**RAMESHWAR SINGH MALIK**]
JUDGE

01.09.2017
vishnu

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No