

***IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH***

**RSA No. 1372 of 2011 (O & M)
Date of Decision:-12.01.2017**

Kamla

...Appellant

Versus

Poonam and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. S.K. Garg, Senior Advocate with
Mr. Teevar Sharma, Advocate
for the appellant.

Mr. Atul Gaur, Advocate for
Mr. Sumeet Goel, Advocate
for respondent No.1.

HARI PAL VERMA J.

The appellant/plaintiff Kamla has filed the present Regular Second Appeal against the judgment and decree dated 26.3.2010 passed by learned District Judge, Kaithal, whereby her appeal against the judgment and decree dated 3.1.2007 passed by learned Civil Judge (Senior Division), Kaithal was dismissed.

Briefly stated, one Siya Nand was owner in possession of the

agricultural land, residential house and a plot having three shops as detailed in Para 1 and 2 of the plaint. He died at Village Bir Bangra, District Kaithal. The appellant/plaintiff No.1 was daughter of Siya Nand, whereas plaintiff No.2 Shanti Devi was his widow. The respondent/defendant is the daughter of pre-deceased Janki Devi, daughter of Siya Nand. Siya Nand had no child of his own and has kept the husband of the appellant/plaintiff No.1 Ilam Singh as his *Ghar Jamai* in order to secure the help of plaintiff and her husband in day to day life. Siya Nand bequeathed all the property in favour of appellant/plaintiff No.1 by executing a Will on 7.2.2000. The appellant and her husband had been living with Siya Nand from the very beginning. On the basis of the Will, the appellant had sought a declaration to the effect that she was owner in possession of the above property. The respondent/defendant admitted that Siya Nand was owner in possession of the alleged property and the relationship with the deceased, as pleaded in the plaint. However, defendant has contended that property left by Siya Nand as detailed in the plaint devolved upon the parties by way of natural succession and mutation No.807 dated 23.2.2000 and mutation No.5959 dated 19.2.2000 were sanctioned in favour of the parties as per law. The appellant/plaintiff had set up the Will before the Assistant Collector 1st Grade, Kaithal but he did not accept that Will a genuine document and sanctioned those mutations on the basis of succession. It has further been pleaded by the respondent/defendant that Siya Nand had never executed any Will rather the same was a forged and fabricated document. The appellant in connivance with her husband Ilam Singh has allegedly prepared the Will

after the death of Siya Nand. Siya Nand was confined to bed for the last three years and at the time of execution of the Will, he was neither in a position to walk nor able to speak and understand the things. Thus, he was not in sound disposing mind. It was denied that in lieu of services rendered by the appellant and her husband, Siya Nand executed the Will in their favour.

From the pleadings of the parties, the following issues were framed by the lower Court :-

- “1. Whether Siya Nand deceased bequeathed away all his property including the land and properties mentioned in paras No.1 and 2 of the plaint in favour of plaintiff No.1 vide registered Will dated 7.2.2000? OPP
2. If issue No.1 is proved, whether the plaintiff No.1 is the owner in possession of the land and properties mentioned in paras No.1 and 2 of the plaint ? OPP
3. Whether the suit is not maintainable ? OPD
4. Whether the plaintiffs have no locus standi to file the present suit ? OPD
5. Whether the suit of the plaintiffs is not properly valued for the purpose of Court fee and jurisdiction ? OPD
6. Whether the plaintiffs have no cause of action ? OPD
7. Whether the plaintiffs are estopped by their own act and conduct ? OPD
8. Relief.”

The trial Court dismissed the suit while observing that the appellant has failed to prove that Siya Nand deceased ever bequeathed away all his properties as mentioned in paras 1 and 2 of the plaint in favour of the appellant vide Will dated 7.2.2000.

Aggrieved against the said judgment, the appellant/plaintiff had filed the appeal before the learned District Judge, Kaithal, however, the said appeal was also dismissed vide judgment and decree dated 26.3.2010, wherein the appellate Court has observed as under :-

“21. In the end it would be worthwhile to highlight here that the testator admittedly died within 24 hours of the execution of this Will. It is not believable that he might have foreseen his death so close that he opted to rush to Kaithal at a distance of 30 kilometers away from his village ignoring the nearby Sub-Tehsil Rajound and Tehsil Pundri and that too for executing this Will. It all shows that virtually the plaintiffs and respondent No.2 got the thumb impressions of the deceased Siya Nand when they saw that he was on his last legs and was going to breathe his last very shortly. In these premises the Will Ex.P4 could not be taken to be validly executed document by the testator. Having considered all these circumstances the lower Court did not commit any error in discarding this will after holding the same to be not free from doubt. The well reasoned findings recorded by the lower Court on issue No.1 are accordingly affirmed. As a consequence of the findings recorded on issue No.1 the findings on issue No.2 are also affirmed as on the basis of this Will the plaintiff No.1 could not be taken to have become owner in possession of the property in dispute which, by way of natural succession, has to devolve upon the plaintiffs and the defendant in equal shares. That was rightly mutated by the revenue authorities. The findings recorded on issue No.2 are also affirmed.”

It is in the aforesaid circumstances the appellant/plaintiff has filed the present regular second appeal impugning the judgment and decree passed by the Courts below.

When the case was listed before this Court for hearing on 12.10.2012, the following order was passed :-

“This Court on 04.4.2011 passed the following order :-

'This is second appeal by the plaintiff aggrieved by the concurrent finding of fact disbelieving the validity of execution of Will Ex.P-4, executed by Sya Nand, in favour of Kamla Devi his daughter, ignoring his wife Shanti Devi and defendant grand-daughter of his pre-deceased daughter on the ground that the suspicious circumstances having not been validly explained, making the Will an unnatural Will.

Counsel for the appellant has submitted that plaintiff Kamla had been residing with the deceased along with her husband as is apparent from a number of documents Ex.P-1 to Ex.P-6, i.e. bank records, voters list and ration card etc.

After hearing the Counsel for the appellant and going through the contents of the Will, which have been read over by the counsel for the plaintiff-appellant in the Court, prima facie, I do not find any substantial question of law involved in the case, at this stage, warranting interference but taking into consideration the fact that the dispute is between close family members i.e. between Kamla and her deceased sister's daughter regarding the property left by the father of Kamla

and the provisions of Order 32-A Rule 3 CPC, requiring a Court to make endeavour for some amicable settlement, it is deemed appropriate, in the interest of justice, to make an attempt for a compromise as the matter concerns the family members who are closely related.

CM No.3845-C of 2011

For the reasons mentioned in the application, delay of 218 days in refiling of the appeal is condoned.

CM No.3846-C of 2011

Notice regarding application for condonation of delay of 11 days in filing of the appeal to the respondents for 20.05.2011.'

Report from mediation and conciliation Centre reveals that mediation proceedings have failed.

Proxy counsel prays for adjournment.

List on 12.04.2013.”

Learned senior counsel has argued that the Courts below have erred in passing the judgments. Siya Nand, father of the appellant was Biswedar of the Village Bir Bangra as well as of village Rajaund and held agricultural land as well as immoveable property in both the villages. Since he was not having any male child and his second daughter Janki Devi had died long back and as such appellant/plaintiff was the only surviving issue of Siya Nand. Therefore, in the absence of any male child, the appellant/plaintiff alongwith her husband and family shifted to village Bir Bangra and started residing there with Siya Nand and his wife Smt. Shanti. Siya Nand in order to avoid any dispute regarding inheritance of his

property, executed a Will in favour of appellant/plaintiff, which was his last Will and executed in a sound disposing state of mind. Therefore, the learned Courts below have committed error in holding that the appellant/plaintiff had failed to prove the Will executed on 7.2.2000 rather the same was duly proved and the Courts have lost sight to the fact that the Will was executed on 7.2.2000 whereas Siya Ram has died on 8.2.2000 i.e. after executing the Will at about 5 PM at Kaithal and at that time office of the Registering Authority at every place was closed. Therefore, no adverse inference can be drawn simply because the Will was not registered.

I have heard learned counsel for the parties and gone through the case file.

There is no dispute as regard passing of order dated October 12, 2012, wherein this Court has observed that there is no substantial question of law involved in the case at this stage, which may warrant interference, but considering the fact that the dispute is between close family members i.e. between Kamla and her deceased sister's daughter regarding the property left by her father, it required the Court to make endeavour to make some amicable settlement. The matter was referred to Mediation and Conciliation Center but the report from the Mediation Center reveals that the mediation proceedings have failed. In the case in hand, PW2 Puran Singh Lambardar, who was an attesting witness of the Will (Ex.P-4) deposed that the Will was executed by deceased Siya Nand. The scribe Vipin Taneja (PW3) also testified that he has scribed the Will at the instance of deceased Siya Nand, who was having sound disposing mind.

After examination of these two witnesses, the onus has shifted upon the plaintiff to establish on file that the Will was executed by deceased Siya Nand in her favour. The Will was executed on 7.2.2000 whereas Siya Nand has died on 8.2.2000 i.e. on the very next day after execution of the alleged Will (Ex.P-4) and at the time of execution he was 75 years of age but interestingly the appellant/plaintiff Kamla, who appeared as PW4 in her cross-examination even could not tell as to whether Siya Nand had died on the day of the alleged Will executed or on the next day. She even could not tell the date, month and year of his death. In this manner, the Courts below have come to the conclusion that Siya Nand had died in the intervening night of 7/8.2.2000 and after obtaining his thumb impression on the blank paper and on the register of scribe, the appellant/plaintiff in connivance with her husband Ilam Singh had manufactured this Will. The Will was never registered. So, merely because the plaintiff and Siya Nand besides her husband Ilam Singh lived together, it could not be taken that Siya Nand might have opted to execute the Will (Ex.P-4) in favour of plaintiff No.1 divesting the defendants of her right to inheritance. The defendant was the daughter of Siya Nand's pre-deceased daughter Janki. Once it is held that the testator has died within 24 hours of execution of the Will, it is not believable that he might have forcing his death so close that he opted to rush Kaithal at a distance of 30 kilometers away from his village ignoring the nearby sub Tehsil Rajound and Tehsil Pundri to execute the Will. The Courts below have recorded a finding of fact that virtually the plaintiff and respondent No.2 have got the thumb impression of deceased Siya Nand when they saw

that he was on his last leg and was going to breath his last very short. Thus, the execution of Will (Ex.P-4) was not held validly document by the testator This Court does not find any substantial question of law involved in the present case, hence, the present appeal is dismissed.

CM No.3847-C of 2011

Prayer in this application filed under Order 41 Rule 5 read with Section 151 CPC is for stay of execution proceedings during pendency of the appeal.

Since the regular second appeal has been dismissed by this Court, the application has also become infructuous and is dismissed as such.

January 12,2017
Vijay Asija

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No