

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 107

RSA-2757-2016 (O&M)

Decided on : 04.07.2017

Nand Lal

..... Appellant

VERSUS

Harish Kumar

..... Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr.Saurabh Bajaj, Advocate, for the appellant.

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DEEPAK SIBAL, J. (ORAL)

The appellant and the respondent are real brothers and the present dispute between them is with regard to the registered Will dated 18.07.1994 executed by their father Chunni Lal through which he bequeathed House No.757/9, Near Bhim Goda Chowk, Panipat (for short the 'suit property') to the respondent. The appellant who had been excluded in the afore Will instituted a suit seeking the Will to be declared null and void. Possession of the suit property was also sought.

The Will was challenged on several grounds including that the suit property was ancestral and therefore could have not been willed by Chunni Lal; the appellant/plaintiff was a natural heir who could not be absolutely excluded from the Will of his father; Raj Rani wife of Chunni Lal had also been completely excluded from the Will which was a suspicious circumstance and enough to declare the Will as null and void; when compared to the original no photograph of Chunni Lal was found on the certified copy of the Will which had been obtained from the office of the Sub Registrar, Panipat; on 18.07.1994 Chunni Lal was not in a sound disposing mind and that after the death of Chunni Lal it was the appellant/plaintiff who performed his last rites/ceremonies and in the *kirya* ceremony was made *karta* of the family.

The respondent/defendant filed a detailed written statement refuting all the afore grounds. To prove the Will he produced the scribe as also the witness to the Will in addition to the Clerk from the office of the Sub Registrar, Panipat. Various documents including copy of the Will; receipt of house tax and water bill etc. were also produced and proved by the respondent.

No rebuttal evidence was led by the appellant.

On the issue whether the suit property was ancestral, the onus was on the appellant but he led no evidence to prove this issue. Rather, he admitted in his cross-examination that he had not seen any document which would prove that the suit property was ancestral. Thus, the trial court decided this issue against the appellant.

On the other hand, as noticed earlier, the respondent proved the Will in question by producing before the trial court not only the scribe but also the witness to the Will who specifically deposed that the Will was written in their presence and that Chunni Lal appended his signatures to the same only after reading it. Narender Singh, Registry Clerk from the office of the Sub Registrar, Panipat, proved that the will was registered. The testimonies of the above witnesses were put to lengthy cross-examination but remained unshaken.

The plea raised by the appellant that he had borne all the expenses of death ceremony and was made *karta* of the family in the *kirya* ceremony, was rejected by the trial court as no evidence in that regard had been led by the appellant.

The exclusion of Raj Rani from the Will was also not considered to be a suspicious circumstance by the trial court and the reason given for the same was that since the year 1990 the appellant had branched away from the family and started residing separately. He had also started his own separate business. However, Chunni Lal continued to live for 13 years thereafter with the respondent.

For the above period Chunni Lal's wife Raj Rani, an aged lady, was also being

served by the respondent and since she was apparently being looked after well by the respondent (as no evidence was placed on record by the appellant to the contrary) Chunni Lal bequeathed the suit property in favour of the respondent.

The ground raised by the appellant that in the year 1994 Chunni Lal was unwell and thus, was not in a sound mental condition to execute the Will in question, was also considered and rejected by the trial court for lack of any evidence led by the appellant in that regard.

In view of the above, the trial court dismissed the appellant's suit.

The appellant filed an appeal. The appellate court considered all the pleas raised on behalf of the appellant but finding no merit in them accorded its approval to the above findings returned by the trial court.

The dismissal of the appeal by the appellate court gave a cause to the appellant to approach this Court through the present appeal.

The only contention raised by learned counsel for the appellant before me is that the Will was shrouded by a suspicious circumstance as Chunni Lal had excluded his wife Raj Rani from the Will and thus, the same should be declared null and void.

The above contention of learned counsel for the appellant needs to be considered only to be rejected. As noticed above, the Will was duly proved by the respondent through leading of cogent evidence. The scribe as also the witness to the Will were produced who fully proved the Will. Their lengthy cross-examination yielded nothing which would support the case of the appellant. The factum with regard to the Will being a registered document was also duly proved by the respondent. It was admitted by the appellant that in the year 1990 he branched away from the family residence and also started his own business. However, Chunni Lal and Raj Rani continued to stay with the respondent. Nothing was brought on record by the appellant nor argued before me to show that the respondent did not serve Chunni Lal and Raj Rani well. It can thus safely be

presumed that they were being faithfully looked after by the respondent. Therefore, the exclusion of Raj Rani from the Will cannot be considered to be such a circumstance to doubt the genuineness of the Will and the prime object in the Will, for the reasons given above, seems to be only to exclude the appellant.

No other ground was urged before me.

In view of the above, in my opinion, no question of law much less any substantial question of law arises in the present appeal warranting interference in the concurrent findings returned by both the courts below.

Dismissed.

04.07.2017
shamsher

[DEEPAK SIBAL]
JUDGE

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No