

RSA No. 5599 of 2016 (O&M)

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

**RSA No. 5599 of 2016 (O&M)
Date of Decision: 5.4.2017**

Sudarshan Kumar and others

.....Appellants

Vs.

Dilbagh Rai and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Jagdish Manchanda, Advocate
for the appellants.

RAMESHWAR SINGH MALIK J. (ORAL)

Unsuccessful plaintiffs are in regular second appeal, against the concurrent findings of facts, recorded by the learned courts below, whereby their suit for declaration, partition and permanent injunction, was dismissed.

Brief facts of the case, as noticed by learned first appellate court in para 2 of its impugned judgment, are that plaintiff No. 1/respondent No. 7 and defendant/respondent No. 1 were real brother and sister and were the legal heirs of the deceased Ram Chander. Plaintiff Nos. 2 to 4 /appellant Nos. 1 to 3 were the son and daughters of Late Krishna Devi, who was the daughter of the deceased Ram Chander and now, appellant Nos. 1 to 3 were also the legal heirs of the deceased. After marriage, name of the mother of appellant Nos. 1 to 3 was changed to Kanta Rani. Deceased Ram Chander

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was the owner of the suit property, which was ancestral property. On 16.03.1999, Ram Chander died intestate leaving behind the parties to the suit as his legal heirs. Since after the death of Ram Chander, mother of appellant Nos. 1 to 3 i.e. Krishna Rani had died, so appellant Nos. 1 to 3 also inherited 1/8th share out of the suit property. After the death of respondent No. 7 and respondents Nos. 1 to 6 had inherited the remaining 7/8th share out of the suit property i.e. agricultural land comprised in Khasra no. 12//23 (8-0), 12//18/2 (4-16), 45//19(8-0), 21 (8-0), 22(6-11), 51//1(7-2), 2(0-14) total measuring 51 Kanals 3 marlas situated in Village Kambas, H.B.No. 242, Tehsil Barara, District Ambala as per jamabandi for the year 2003-2004.

In the year 1999, they had started claiming their share out of the suit property but defendants/respondent Nos. 1 to 5 kept on postponing the matter on one pretext or the other. Though, defendants/respondents Nos. 1 to 5 had assured them that they would give their share out of the suit property in the next year, but all in vain. Ultimately in August 2008, they came to know that on the basis of the forged will, alleged to have been executed by deceased Ram Chander in the favour of defendants/respondents Nos. 1 to 5, defendants/respondent Nos. 1 to 6 got entered mutation No. 640. In fact, the deceased had never executed any Will and if there was any Will, the same was the result of fraud and misrepresentation, as the deceased was having good relations with all his children and he died at the age of 92 years and at that time, he was enjoying good health. Even otherwise, since the suit property was ancestral, the deceased was not having any right to alienate the property except his own share. Since the alleged Will was a result of fraud, the alleged mutation was also liable to be set aside. Defendants/respondent Nos. 1 to 6 also threatened appellants and respondent No. 7 that either they would alienate the suit property or would create some charge upon it, for

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which, they have got no right. Thus, they also sought the relief of declaration to the effect that the Will dated 21.06.1993 alleged to have been executed by their father Ram Chander was illegal, null, void, and was a result of fraud and misrepresentation and had no effect on their rights and was liable to be set aside and that mutation no. 640 dated 30.06.2008 along with the relief of possession of their respective shares, out of the suit property by partitioning the same by metes and bounds. They further sought the relief of permanent injunction restraining the defendants/respondents no. 1 to 5 from alienating or from creating any sort of charge upon the suit property during the pendency of the suit.

Having been served, defendants appeared and filed their contesting written statement, raising more than one preliminary objections. On completion of pleadings of the parties, learned trial court framed the following issues.

1) Whether the mutation no. 640 dated 30.06.2008 sanctioned on the basis of will dated 21.06.1993 alleged to have been executed by Ram Chander s/o Faquir Chand is illegal, null and void and not binding upon the rights of the plaintiffs? OPP

2) Whether Ram Chander S/o Faquir Chand executed a legal and valid will of his own free will and in sound disposing mind in favour of his sons, if so its effect? OPD

3) Whether the plaintiffs are entitled to the relief of declaration as prayed for by them? OPP

4) whether the plaintiffs are entitled to the relief of possession as prayed for by them? OPP

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5) whether the plaintiffs are entitled to the relief of permanent injunction as prayed for by them? OPP

6) Whether the plaintiffs have no locus standi and cause of action to file and maintain the present suit? OPD

7) Relief.

With a view to prove their pleaded case, both the parties brought on record 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 plaintiffs have miserably failed to prove their case. Accordingly, suit for declaration, partition and permanent injunction filed by the plaintiffs was dismissed vide impugned judgment and decree dated 27.7.2013. Feeling aggrieved, plaintiffs filed their first appeal, which also came to be dismissed by the learned first appellate court, vide impugned judgment and decree dated 18.4.2016. Hence this regular second appeal at the hands of plaintiffs.

Heard learned counsel for the appellants.

Relationship between the parties is not in dispute. Plaintiffs No.1-Smt. Shanti Rani and one Smt. Krishna Rani were daughters of late Sh. Ram Chander, whereas plaintiffs No.2 to 4 were children of Smt. Krishna Rani. Defendants No.1 to 5 were sons of late Sh. Ram Chander and defendant No.6 was his 3rd daughter. Thus, it becomes clear that one daughter of late Sh. Ram Chander and children of another daughter were on one side, being plaintiffs and five sons and 3rd daughter of late Sh. Ram Chander were on the other side, being defendants. Suit property was left behind by late Sh. Ram Chander. Plead case of the plaintiffs-appellants was that registered Will dated 21.6.1993, allegedly executed by late Sh. Ram Chander in favour of his sons in equal shares, was the result of fraud and misrepresentation.

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However, plaintiffs-appellants miserably failed to prove the plea of fraud raised by them. Onus was on the plaintiffs to prove their pleaded case by leading cogent and convincing evidence but they failed to do so. On the other hand, defendants duly proved the Will. It was a registered Will. A careful perusal of the Will (Ex.D1) would make it crystal clear that it was executed by the testator in most natural manner, satisfactorily explaining as to why he was intending to disinherit his daughters from the suit property. Having said that, this Court feels no hesitation to conclude that learned courts below were well within their jurisdiction to pass the impugned judgments and decrees and the same deserve to be upheld.

It is the settled principle of law that onus is always on the propounder of the Will to prove its due execution, dispelling suspicious circumstances surrounding the Will. In the case in hand, defendants-respondents have successfully discharged their onus by proving due execution of the Will. It was also duly proved that the Will was not surrounded by any suspicious circumstances, it being a genuine and a natural Will. One of the daughters of late Sh. Ram Chander was also supporting her brothers-defendants No. 1 to 5. Further, once the plaintiffs were alleging fraud and misrepresentation qua the Will in question, a heavy onus was on them to prove the plea of fraud but they failed to do so. Under these undisputed facts and circumstances of the case, it can be safely concluded that learned courts below committed no error of law, while passing the impugned judgments and decrees and the same deserve to be upheld, for this reason also.

The abovesaid view taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as different High Courts, including this Court:-

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Gopalan Nambiar Vs. Balakrishnan Nambiar, 1995 AIR (SC) 182 (SC)

Uma Devi Nambiar and others Vs. T.C. Sidhan (Dead), 2004 (1) SCC 321 (SC)

Mahesh Kumar (dead) by Lrs Vs. Vinod Kumar and others, 2012 (2) RCR (civil) 493 (SC)

Chanchal Singh Vs. Rattan Kaur (deceased) through her legal heirs Charan Singh and others, 1988 (1) PLR 666 (P&H)

Kartar Kaur Vs. Kewal Singh, 1997 (2) RCR (civil) 483 (P&H)

Kartar Singh and another Vs. Dilber Singh (dead) through legal representatives 2009 (3) RCR (civil) 253 (P&H)

Supreet Singh alias Surpreet Singh Vs. Narinder Singh and others, (RSA No. 6842 of 2016, decided on 20.2.2017) (P&H)

Jambunatha Iyer Vs. Sankari Ammal, 1995 (2) CivCC 654 (Madras H.C.)

Before arriving at a judicious conclusion, learned first appellate court re-considered the factual as well as legal aspect of the matter and appreciated the same in correct perspective. Relevant findings recorded by learned Additional District Judge in para 24 and 25 of the impugned judgment, which deserve to be noticed here, read as under:-

24. In the present case, the Will was allegedly executed in the year 1993 and deceased Ram Chander had expired in the year 1999 and he never challenged the said Will, therefore, this also inspires confidence in the alleged Will. Moreover, the Will is a registered document and therefore, it also added to the authenticity of the document. Merely just because Ram Chander was aged at the time of execution of Will is no ground to presume that the alleged Will is a suspicious

circumstance, especially in the circumstance that the Will has been made by free will as proved by the attesting witnesses being examined on behalf of respondents in the shape of DW2 Dalip Singh and DW4 Krishan Lal.

25. Except the above evidence, no other evidence has been led by the appellants before the learned trial court with regards to the factum that the Will was a result of fraud and misrepresentation, the appellants have only examined one witness namely Sudarshan Kumar and no other witness has been examined to corroborate his version. Moreover, no evidence has been brought on record by the appellants before the learned Sudarshan Kumar etc. Vs. Dilbagh Rai etc. trial court that deceased was not in a fit condition and was not in disposing state of mind on the date of execution of the above said Will. In such eventuality, such a bald self serving statement of the appellant is not sufficient to prove that the Will was a result of fraud. Moreover, the executant has appeared himself before the Sub Registrar and therefore, it cannot be presumed in any manner that Ram Chander was not in a fit state of mind at the time of execution of the Will in question. As far as authorities cited by learned counsel for the appellants are concerned, the same are not applicable in the present facts and circumstances of the present case.

Another relevant aspect of the matter was, whether the suit

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property was ancestral in the hands of late Sh. Ram Chander or not. Plaintiffs-appellants failed to prove the suit property to be ancestral in the hands of late Sh. Ram Chander. There was no sufficient evidence to prove that the property in question has traveled from three generations to late Sh. Ram Chander. Plaintiffs did not place on record sufficient evidence, including relevant excerpt of the revenue record, which might have proved that suit property was ancestral in nature.

It is also a settled proposition of law that every property would be treated as non ancestral, until and unless it is specifically proved to be ancestral by leading cogent and convincing evidence. As noticed above, plaintiff-appellants failed to bring on record relevant evidence in this regard and in the absence of any relevant evidence, suit property was rightly held non ancestral in the hands of late Sh. Ram Chander. Similarly, plaintiffs-appellants failed to prove their plea of fraud by leading cogent and convincing evidence in this regard. In this view of the matter, it is unhesitatingly held that learned courts below were well justified in recording their concurrent findings of facts, while passing the impugned judgments and decrees and the same deserve to be upheld, for this reason as well.

During the course of hearing, learned counsel for the appellants failed to point out any patent illegality or perversity in either of the impugned judgments rendered by the learned courts below. He also could not refer to any question of law much less substantial question of law, which is sine qua non for entertaining a 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 **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286** and

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Santosh Hazari Vs. Purshottam Tiwari, 2001 (3) SCC 179.

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 the present appeal is misconceived, bereft of merit and without any substance. Thus, it must fail. No case 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

5.4.2017
Ak Sharma

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