

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(1)

RSA No. 73 of 2016 (O&M)

Date of Order: 15.12.2017

Pratima Sethi and another

...Appellants

Versus

Dinesh Chaudhary and others

...Respondents

(2)

RSA No. 1010 of 2016 (O&M)

Subhash Chaudhary

...Appellant

Versus

Dinesh Chaudhary and others

...Respondents

(3)

RSA No. 2194 of 2016 (O&M)

Anuradha Mehta

...Appellant

Versus

Dinesh Chaudhary and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Piyush Kant Jain, Advocate and
Mr. Rajshekharan, Advocate,
for the appellants.

Mr. Birender Singh Rana, Sr. Advocate, with
Mr. Rajinder Paul, Advocate, for respondent no.1.

Mr. Vikas Bahl, Sr. Advocate, with
Mr. Divyanshu Sharma, Advocate and
Ms. Japneet Kaur, Advocate,
for respondent no.2.

ANIL KSHETARPAL, J.

This judgment shall dispose of the Regular Second Appeal
Nos.73, 1010 and 2194 of 2016, as all the appeals are arising out of the
same suit filed by three plaintiffs.

Dispute in the present case is with respect to the estate of late

Chaudhary Roop Chand, an Advocate, who was practicing in the Punjab and Haryana High Court. He had three sons and three daughters. One of the daughter Sushma Mehta had pre-deceased Chaudhary Roop Chand. Anuradha Mehta daughter of the pre-deceased daughter is the appellant in the Regular Second Appeal No.2194 of 2016.

Plaintiffs claim the property on the basis of natural succession, whereas defendant no.2 (Suresh Chaudhary) has set up a Will (testamentary document) dated 21.02.1989 executed by late Chaudhary Roop Chand bequeathing his agricultural land equally amongst three sons and residential house at Chandigarh exclusively in favour of defendant no.2 Suresh Chaudhary.

To prove the Will (testamentary document), one attesting witness, namely, Naresh Batra has been examined as DW5. Learned courts have noticed that all the three sons including plaintiff no.1 had admitted the correctness of the Will (testamentary document) while submitting application for transfer of the agricultural land in District Ambala, vide application dated 04.01.2008. It is not in dispute that on the basis of this application, the agricultural land was transferred in favour of 3 sons in accordance with the Will (testamentary document). Still further Ex.DW8/E is another application signed by all the three brothers and brother of late Chaudhary Roop Chand for partition of the agricultural land. Plaintiff no.1-Subhash Chaudhary appellant in RSA No.1010 of 2016, has further sold the agricultural land which had fallen to his share as per the Will (testamentary document) vide sale deed dated 07.06.2010. In other words, plaintiff no.1 did not dispute the correctness of the Will (testamentary document) made by late Chaudhary Roop Chand with respect to the agricultural land and the

Will (testamentary document) has been given effect to qua agricultural land, however now he has filed an appeal.

Both the Courts after appreciating the evidence available on the file, dismissed the suit filed by the plaintiffs. Now these three appeals have been filed separately by each of the plaintiff.

The Will (testamentary document) dated 21.02.1989 refers to all the members of the family including a litigation pending with Ranjit Kumari. The testator has noticed that his remaining two sons, namely, Subhash Chaudhary and Dinesh Chaudhary are well settled in foreign countries for the last many years. The testator has further mentioned that his three daughters had already been married, however, one has died. He has noticed that Suresh Chaudhary, defendant no.2, the second son, is my backbone in all matters and has been looking after him in all these years. The testator further made a reference that Suresh Chaduhary, the second son in whose favour the residential house has been bequeathed shall be responsible for the litigation with Ranjit Kumari and in case any damages become payable, it shall be the responsibility of Suresh Chaudhary, defendant no.2.

Will (testamentary document) is also signed by two attesting witnesses, one Shri Shamsher Singh, who was immediate neighbour and second by Sh. Naresh Batra (DW5).

It is not disputed that after the death, the Will (testamentary document) was got registered when both the attesting witnesses gave affidavits acknowledging attestation of the Will (testamentary document) and certifying about its genuineness.

I have heard learned counsel for the parties at length and with

their able assistance gone through the judgments passed by the Courts below as well as photocopies of the record produced by them during the course of arguments.

The argument of learned counsel for the appellants is that one of the appellant in RSA No.73 of 2016 had filed an application for additional evidence, so as to produce Shamsher Singh, the other attesting witness in evidence. Similar application was also filed by Dinesh Chaudhary. Order passed by the first appellate Court dismissing the application for permission to lead additional evidence is wrong.

Learned first appellate Court after examining the aforesaid application in detail dismissed the same. The Court noticed that the one of the attesting witness has already been examined and plaintiffs never made any attempt to examine the second attesting witness i.e. Shamsher Singh during the course of trial which remained pending between the parties for almost 23 years as the suit was instituted on 05.04.1991. Plaintiffs had themselves challenged the validity of Will (testamentary document) in the plaint. Hence, plaintiffs were in knowledge of the requirement that attesting witness would be required to be examined. Defendants while filing the written statement had claimed succession of the residential house on the basis of the Will (testamentary document).

Plaintiffs had more than enough opportunities to produce Shamsher Singh in the witness box. Shamsher Singh, the other attesting witness had sworn in affidavit while getting the Will (testamentary document) registered, which is Ex.DW3/C on the record certifying that the Will is properly executed by late Chaudhary Roop Chand.

In the considered opinion of this Court, the application for

additional evidence was only to delay the proceedings. Hence, there is no error in the order passed by the learned first appellate court dismissing application for additional evidence.

Next submission of learned counsel for the appellants is that the second application filed by Dinesh Chaudhary for additional evidence has not been decided.

It may be significant to note here that prayer made in the application filed by Dinesh Chaudhary is same as was submitted by Saroj Trehan, which has been decided by the learned first appellate Court. Once the prayer made in both the applications was same, no separate order was required.

Learned counsel for the appellants has further submitted that Will (testamentary document) is not proved to have been executed in accordance with Section 63 of the Indian Succession Act, 1925. He submits that only one attesting witness has been examined.

I have carefully gone through the statement given by the attesting witness Naresh Batra, who has appeared as DW5. Relevant part of the statement reads as under:-

“I knew Sh. Roop Chand Chaudhary, Adv. He had executed a Will on 21.2.1989. I have seen the original Will from the summoned witness PW3 which is the same Will which was executed by Roop Chand Chaudhary, Adv. He has signed the said Will in my presence and in the presence of Shamsher Singh and we all sign in the presence of each other.”

The evidence of this witness could not be shaken in the cross-

examination

In the considered opinion of this Court, this witness has specifically stated that the testator has signed the said Will (testamentary document) in his presence and in the presence of Shamsheer Singh, the other attesting witness and both the attesting witnesses signed in the presence of the testator. In fact all the three persons i.e. testator and two attesting witnesses were present at one point of time and have signed the Will (testamentary document) in the presence of each other.

One must not forget that late Chaudhary Roop Chand was an advocate of a standing practicing in the Punjab and Haryana High Court. He had executed the Will (testamentary document) duly signed by him. No effort has been made by the plaintiffs to establish that the Will does not bear the signatures of the testator.

Learned counsel for the appellants has further submitted that Naresh Batra, the attesting witness examined has a criminal record and, therefore, his evidence cannot be relied upon.

A careful reading of the statement of Naresh Batra, proves that Naresh Batra had specifically denied pendency of any criminal case against him. Plaintiffs did not produce any evidence to prove that fact. In any case, Naresh Batra is not the beneficiary of the Will (testamentary document). Naresh Batra is only attesting witness, therefore, his evidence cannot be ignored.

Learned counsel for the appellant has further submitted that in the previous litigation between Ranjit Kumari, an application for legal heirs was filed impleading all the natural heirs.

In the considered opinion of this Court, filing of such

application would not estop the successor of late Chaudhary Roop Chand to claim succession on the basis of the Will (testamentary document). One must not forget that late Chaudhary Roop Chand had handed over the Will to Shamsheer Singh, who had taken it away to foreign country, where he is now settled. He handed over the Will to Shri Suresh Chaudhary only in the year 1992 and, thereafter, the Will (testamentary document) was got registered in May, 1992. In fact the application for registration was submitted on 20.02.1992 and the public notice was given inviting objections but no objections were filed.

Learned counsel for the appellants in RSA No.73 of 2016, has submitted that the admission of the co-plaintiff would not be binding on his clients.

In this regard, it may be noticed that through the Will (testamentary document) late Chaudhary Roop Chand had also bequeathed his agricultural land equally in favour of his three sons. Once all the three sons had got mutation of the agricultural land on the basis of the aforesaid Will (testamentary document), it will certainly be the factor to be noticed while deciding genuineness of the Will (testamentary document).

Learned counsel for the appellants in RSA No.73 of 2016 have further tried to argue that the signatures of the testator are shaky and are not with the stable hand.

I have seen the photocopy of the Will (testamentary document). The signatures of late Chaudhary Roop Chand are in flow and not shaky as is being asserted.

In view of the discussion made above, this Court does not find any good ground to interference with the concurrent findings of fact arrived

at by the courts below.

The regular second appeals are dismissed.

December 15, 2017
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : YES/NO
Whether reportable : YES/NO