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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ FAO(OS)No.157/2017& CM Nos.18971-973/2017

% Date of decision : 19th May, 2017

RAVINANDANI AND ANR Appellants
Through : Mr. Rohan Thawani and
Mr. Anand, Advs.

versus

RAJA PREM SINGH Respondent
Through : None.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE PRATHIBA M. SINGH

JUDGMENT (ORAL)

GITA MITTAL, ACTING CHIEF JUSTICE

CM No.18973/2017 (Exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

CM No.18971/2017 (Delay)

1. We have heard ld. counsel for the parties on this application.
2. We are satisfied that the appellants have adequately explained the circumstances in which the delay of 11 days in filing this appeal has occasioned. The delay of 11 days in filing the appeal is condoned.
3. The application is disposed of.

FAO(OS) 157/2017

1. The appellant assails the order dated 10th March, 2017 whereby the ld. Single Judge has rejected I.A.No.3067/2017 filed by the appellants herein (defendants no.1 and 2 in the suit) which was filed under order XIV rule 5 of the Code of Civil Procedure. The appellants had prayed that issue no.3 framed by the ld. Single Judge on the pleadings of the parties by the order dated 11th June, 2017 be modified to the extent that the onus regarding proof of the Will placed therein be corrected and the onus to disprove the same be placed on the plaintiff.

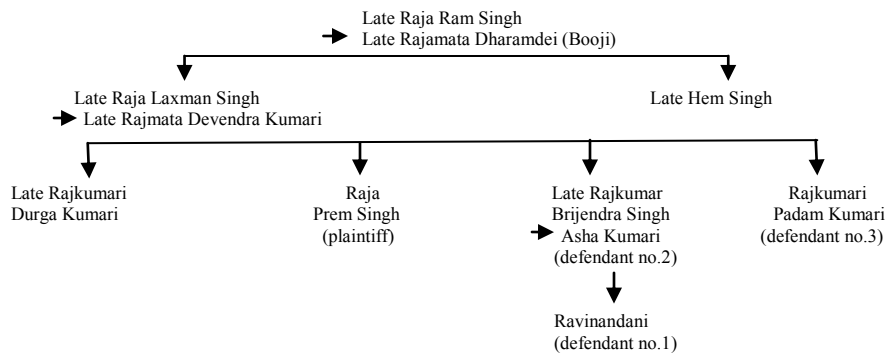
2. We may note that by the impugned order dated 10th March, 2017, the ld. Single Judge accepted the prayer for correction of the date of the Will as sought by the defendant no.1 in the application. However, the prayer of the appellants/defendants to shift the onus of burden to disprove the Will on the plaintiff instead of the defendant was rejected.

3. The facts giving rise to the present appeal are within the narrow compass and to the extent necessary are noted hereafter.

4. CS(OS)No.76/2012 was filed by Raja Prem Singh (Respondent herein) seeking partition of the properties of Late Rajmata Devendra Kumari in equal shares between her class 1 legal heirs as per provisions of Hindu Succession Act, 1956 and the consequential relief of possession.

5. The respondent had also prayed for separate possession of the shares of the plaintiff urging that he was in a constructive possession of the same.

6. So far as pedigree and the relationship of the parties to the suit as well as in the appeal is concerned, the same is discerned or the pedigree of the table of the family set out in para 2 of the plaint which reads as follow:



7. Thus the respondent/plaintiff is a son of Raja of Chamba Late Raja Laxman Singh who died on 20th May, 1971 leaving behind his widow Rajmata Devendra Kumari, and two sons, i.e., the respondent/plaintiff as elder son and late Rajkumar Brijendra Singh being the younger son, as well as two daughters, namely, late Rajkumari Durga Kumari and Rajkumari Padma Kumari.

8. As such, the respondent/plaintiff has urged that the following are the class I legal heirs of Late Rajmata Devendra Kumari:

- “(i) Raja Prem Singh (the plaintiff)
- (ii) Rajkumari Padma Kumari (defendant no.3)
- (iii) Late Rajkumar Brijender Singh, Through his legal heirs:
 - (a) Ravinandani, D/o Rajkumar Brijender Singh

(defendant no.1)
(b) Asha Kumari, W/o Late Rajkumar Brijender Singh
(defendant no.2)”

9. The plaint makes an extensive reference to a family settlement regarding the Estate of Late Raja Laxman Singh and the devolution of shares upon the parties.

10. The respondent/plaintiff has urged that Late Rajkumar Brijender Singh got his name registered in the revenue records in collusion with the Revenue Officers without giving notice to the plaintiff and also refers to other litigation. So far as the suit is concerned, the respondent has urged that it came to his knowledge that Late Rajkumar Brijender Singh, his wife (defendant no.2) and his daughter (defendant no.3) were attempting to get the property owned by Rajmata Devendra Kumari mutated in their own name on the basis of some forged and fabricated Will of Rajmata Devendra Kumari.

11. In these circumstances, the suit in question came to be filed contending that the alleged Will dated 11th June, 2004 was forged; that probate had not been sought; that the defendants had got done mutation proceedings before the concerned tehsildar in chamber and that the Will was liable to be ignored for the purpose of devolution of the rights of the parties in the property of Late Rajmata Devendra Kumari.

12. The appellants/defendants no.1 and 2 in the suit had filed written statement placing reliance and claiming under the alleged Will

dated 11th June, 2004.

13. In this background, on a consideration of the pleadings of the parties, the following issues were framed on 11th January, 2017:

“1. Whether the suit filed by the plaintiff is barred before this Court on the grounds of lack of territorial jurisdiction? OPD

2. Whether the plaintiff is entitled for decree of partition and separate possession with regard to the properties of Late Rajmata Devendra Kumari as being the Class 1 Legal Heir? OPP”

3. Whether the Will dated 11.06.2014 propounded by the defendant is valid and genuine Will? OPD

4. Whether the plaintiff is entitled to the relief claimed in the prayer clause? OPP”

14. We have noted above the prayer made by the appellant by way of I.A.No.3067/2017 under Order XIV Rule 5 of the CPC for correction of the date of the Will as recorded in issue no.3. The Id. Single Judge has corrected the same to read as 11th June, 2004 instead of 11th June, 2014. However the prayer for shifting the burden and onus of proving the validity of the Will as per issue no.3 on the respondent/plaintiff has been rejected.

15. It was vehemently contended by the appellant/defendant before the Id. Single Judge that it was the plaintiffs who were disputing the validity of the Will and consequently they had to prove that the Will was fraudulent. In support of this contention, reliance was placed on

the pronouncement of the Supreme Court reported at **(2006) 5 SCC 558 *Anil Rishi v. Gurbaksh Singh***. We find that in para 4 of the impugned judgment, the Id. Single Judge has noted that in terms of Section 101 of the Evidence Act, 1872, the person who seeks judgment in respect of any legal right must prove the facts for seeking the said relief.

16. In the proceedings in the suit, the plaintiff is not who is claiming right, interest and entitlement to the property under the Will but it is the appellants/defendants who are claiming entitlement, right and interest in the property premised completely on the Will dated 11th June, 2004.

17. The Id. Single Judge has noted that so far as ***Anil Rishi*** was concerned, the issue in that case was with regard to an agreement to sell which bore the signature of the plaintiff. However the plaintiff was denying the signature and contending that the documents was forged. It is in that context that the Supreme Court had stated the above position. In the present case, it is not the appellant's case that the Will bears the signatures of the respondent which they are denying. The principles laid down in ***Anil Rishi*** would have no application to the facts of the present case.

18. It is trite that if a person pleading the case has to establish the same by cogent and relevant evidence. In this regard, we may usefully refer the pronouncement of the Supreme Court reported at **(2005) 2 SCC 784 *Sridevi & Ors. v. Jayaraja Shetty & Ors.*** In this

case, the court had considered the issue as to whether the propounded Will was actually signed by the testator or not. The manner in which the Will was required to be valid and its was required to be established was considered in para 14 of the judgment, which reads as follows:

“14. The propounder of the Will has to show that the Will was signed by the testator; that he was at the relevant time in sound disposing state of mind; that he understood the nature and effect of dispositions and had put his signatures to the testament of his own free will and that he had signed it in the presence of the two witnesses who attested in his presence and in the presence of each other.”

19. On the same aspect, we may also refer to the pronouncement of the Supreme Court reported at **(1982) 1 SCC 20 Indu Bala Bose & Ors. v. Manindra Chandra Bose & Anr.** wherein the Supreme Court had succinctly considered the issue of onus of proving the Will in the following terms:-

“7. ...The onus of proving the Will is on the propounder and in the absence of suspicious circumstances surrounding the execution of the Will, proof of testamentary capacity and the signature of the testator as required by law is sufficient to discharge the onus. Where however there are suspicious circumstances, the onus is on the propounder to explain them to the satisfaction of the court before the court accepts the Will as genuine. Even where circumstances give rise to doubts, it is for the propounder to satisfy the conscience of the court. xxxIf the propounder himself taken a prominent part in the execution of the Will which confers a substantial benefit on him, that

is also a circumstance to be taken into account, and the propounder is required to remove the doubts by clear and satisfactory evidence.”

Therefore, it is for the propounder of a Will to establish its genuineness as well as the validity of its execution.

20. It may be noted that in the present case even if the plaintiff had not referred to the Will in question or to the defendants’ reliance thereon, the Will would have been set up by the appellant in their written statement in answer to the plaint. The plaintiff would then had an opportunity to dispute the execution of the Will in its replication. In either case, the Testamentary bequest is a document which is relied upon by the appellants/defendants. Having propounded the same, the legal burden to prove the document rests squarely on the appellants.

For all these reasons, we find no infirmity in the order of the Id. Single Judge.

This appeal is devoid of any legal merits and is dismissed.

CM No.18972/2017 (Stay)

In view of the orders passed in the appeal, this application does not survive for adjudication and is hereby dismissed.

ACTING CHIEF JUSTICE

PRATHIBA M. SINGH, J

MAY 19, 2017/mk