

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

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Date of Decision: February 08, 2017

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RSA 353/2016

JAI BHAGWAN

..... Appellant

Through: Mr.Pawan Sharma, Advocate

versus

PREM WATI & ORS.

..... Respondents

Through: Mr.Arendra Singh, Advocate for R-1
to R-3

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

JUDGMENT (Oral)

RSA 353/2016

1. Respondent Nos.1 to 3 have been served and counsel as above appears on their behalf.
2. It is informed that respondent No.4, Ramesh is the son of the appellant, Jai Bhagwan. However, as per the memo of parties, respondent No.4 is being shown as son of late Charan Singh.
3. Learned counsel for the appellant submits that respondent No.4 is son of appellant but his parentage is wrongly written and he be permitted to file amended memo of parties by mentioning correct parentage of respondent No.4. He further submits that address of appellant and respondent No.4 is same.

4. The appellant is directed to file the amended memo of parties within a week and the same be placed on record.
5. By way of this Regular Second appeal filed under Section 100 CPC, appellant/plaintiff has impugned the concurrent judgments of the Courts below i.e. of the trial Court dated 1st October, 2015 and of the First Appellate Court dated 22nd August, 2016
6. Learned counsel for the appellant/plaintiff has contended before the Court that the Will dated 23rd March, 2007 is forged and fabricated for the reason that Sh.Tara Chand expired just a few day thereafter on 3rd April, 2007. Sh.Tara Chand was a bachelor and was being looked after by the appellant/plaintiff. Sh. Tara Chand was not in sound state of health and mind before his death so as to execute a Will in favour of the respondents and had no occasion to visit the office of Sub-Registrar for the purpose of execution and registration of the said Will.
7. Learned counsel for the appellant has been requested to make submissions on the substantial question of law involved in this appeal for the reason that both the Courts below have held that the Will was executed by Sh.Tara Chand voluntarily as well proved under Section 68 of Indian Evidence Act, 1872.
8. Learned counsel for the appellant has contended that since deceased Tara Chand was bachelor and was looked after by the appellant herein, till a few days before his death, he was not in sound state of mind to execute the Will and go to office of Sub-Registrar to get it registered. Hence, both the Courts below committed illegality by holding that the Will has been proved to be duly executed by late Sh.Tara Chand.
9. Learned counsel for the appellant has been requested to show it from the record if there was any medical record produced and proved by him from

which it can be established that late Sh.Tara Chand was not in sound state of health and his mental faculties were not such that he could have executed the Will on 23rd March, 2007 and also visit the office of Sub-Registrar for its registration. Learned counsel for the appellant failed to point out any such material which could give rise to above inference.

10. It being a case of natural death of Sh.Tara Chand, merely because after a few days of executing the Will Sh.Tara Chand expired, it alone could not be considered as a circumstance to question his capability to execute the Will. Learned counsel for the appellant has fairly conceded that no medical record was proved before the learned Trial Court in respect of physical and mental condition of late Sh.Tara Chand during that period.

11. Civil Suit No. 511/14 was filed by Sh.Jai Bhagwan, appellant/plaintiff by impleading the widow and children of his brother late Sh.Charan Singh as respondent Nos.1 to 3. Respondent No.4 is Mr.Ramesh, son of the appellant/plaintiff herein. The facts as pleaded by the appellant in the civil suit are as under:-

(i) Sh.Tara Chand was real brother of his father Sh.Bakhtawar Singh and was a bachelor. Late Sh.Tara Chand treated the appellant/plaintiff as a son and was being looked after by the appellant/plaintiff.

(ii) Sh.Bakhtawar Singh and Sh.Tara Chand were having equal share in the agricultural land. Sh.Tara Chand died intestate on 3rd April, 2007 and half share of his property fell into his share and remaining half to the share of respondent Nos.1 to 3 i.e. legal heirs of his brother Sh.Charan Singh.

(iii) He came to know about the Will being executed by Sh.Tara Chand on 23rd March, 2007 only when respondent No.1, widow of late Sh.Tara Chand applied for mutation of the property pleading that Sh.Tara Chand never resided with the respondent Nos.1 to 3 or executed any Will in their favour

and pleaded the Will to be forged and fabricated. He filed a suit for declaration that the Will dated 23rd March, 2007 registered as document No.229, in Book No.3, Vol.No.420 on page 13 to 15 on 23rd March, 2007 with the office of Sub Registrar IX, Delhi is fraudulent, illegal, invalid, null & void and ineffective.

(iv) Consequential relief of permanent injunction was also sought praying as under:

(a) To declare the alleged Will dated 23rd March, 2007 registered as document No.229, in Book No.3, Vol.No.420 on page 13 to 15 on 23rd March, 2007 with the office of Sub Registrar IX, Delhi purported to and alleged to have been executed by late Sh.Tara Chand son of Dhani Ram, as fraudulent, illegal, invalid, Null & void and ineffective.

(b) To restrain the defendants from enforcing the said alleged forged and fabricated Will dated 23rd March, 2007 allegedly executed by Tara Chand and from selling/disposing of the land and residential plots left by Shri Tara Chand i.e. ½ share in land bearing Khata Khatauni No.29/29 Killa/Khasra No.7//12(1-6), 13(4-16), 14(4-16) 15(4-16) 16/2 (0-14), 17 (4-16), 60/1 (0-7), 179 (1-1) 204 (0-1) situated within revenue Estate of Village Daryapur Khurd, P.O. Ujwa, Tehsil Najafgarh, New Delhi.

12. Following issues were framed in the above suit on 11th January, 2010:-

(i) Whether the plaintiff has suppressed vital and material facts from this Court? OPD.

(ii) Whether the Will dated 23.3.2007 of Late Sh.Tara Chand is a forged and fabricated document? OPP.

(iii) Whether the plaintiff is entitled to the relief claimed for? OPP.

(iv) Whether the present suit is bad for non-filing of appropriate Court fees? OP Parties.

13. On issue No.(ii) after considering the evidence led by the parties, the learned Trial Court has dealt with all the contentions raised i.e. whether the testator was not of sound disposing mind to understand the consequences of his act at the time of execution of the Will, whether the Will was forged or fabricated. Learned Trial Court held that the Will was proved in accordance with the requirement of Section 68 of the Indian Evidence Act, 1872. It was also noted that late Sh.Tara Chand though excluded the appellant/plaintiff from inheriting his estate, did not exclude the son of the appellant/plaintiff who has been impleaded as defendant No.4 in the suit. Learned Trial Court also noted that had the Will been forged or fabricated, entire share would have gone to legal heirs of late Sh.Charan Singh and not to the son of the appellant/plaintiff. On appreciation of the evidence led, the Will was held to be properly executed document or testament of Sh.Tara Chand and duly proved as per requirement of law.

14. The First Appellate Court concurred with the findings of the learned Trial Court and held Will to be duly proved as genuine.

15. The appellant is before this Court in second appeal. Both the Courts below have given satisfactory reasons for arriving at the conclusion that the Will is genuine and also proved in accordance with law. This court in second appeal cannot substitute its opinion for the opinion of the First Appellate Court unless it is shown that the conclusions drawn by the Courts below were erroneous or against the settled position of law or based on admissible evidence.

16. The substantial question of law has to be distinguished from a substantial question of fact. What is argued before this Court is a question of fact as to whether the testator late Sh.Tara Chand was in sound state of mind on 23rd March, 2007 and whether the Will executed by him is genuine or it is

a forged and fabricated document which is a question of fact on which there is concurrent finding by the Courts below.

17. The instant appeal does not involve any substantial question of law hence the same is hereby dismissed.

CM No.43609/2016 (Stay)

Dismissed as infructuous.

**PRATIBHA RANI
(JUDGE)**

FEBRUARY 08, 2017

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