

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

1. **RSA No.1061 of 1989 (O & M)**
Date of Decision:-11.1.2018

Shugan Lal Hakim (deceased) through LRs and another

...Appellants

Versus

Gian Chand and others

...Respondents

2. **RSA No.1783 of 1989 (O & M)**

Rattan Lal and others

...Appellants

Versus

Gian Chand and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Bhupesh Dogra, Advocate
for the appellants.

Mr. Ashok Gupta, Advocate
for the respondents.

AMIT RAWAL J.(Oral)

This order of mine shall dispose of two appeals preferred by

the defendants against the findings rendered by the learned lower Appellate Court on issue No.4 despite the fact that the suit preferred by the respondent-plaintiff was dismissed. Learned counsel for the appellants submits that the observation given by the learned lower Appellate Court is on issue No.4 has adversely effected the parties and therefore the appeal would be maintainable. In support of his contentions, learned counsel for the appellants relies upon the judgment rendered by this Court in **Hari Parshad vs. Mangat Ram and another 1985 AIR (Pb) 273.**

Before advertng to the arguments of the counsel for the parties it would be in the fitness of things to notice factual matrix. Gian Chand, Deep Chand, Prem Chand and Vijay Chand sons of Zila Ram preferred a civil suit by claiming declaration to the effect that they are owner in share of Smt. Dropti Devi i.e. $\frac{1}{2}$ (half) share in the land bearing Khewat/Khatoni No.4/5 Khasra No.18/28/20 measuring (10-5) and (2-11) situated in Village Khangeska Tehsil Kalka, District Ambala consequently the mutation sanctioned in favour of the defendant on 18.12.1981 by the Assistant Collector 1st Grade, Kalka being illegal, null and void ineffective as far as the rights of the plaintiffs, with the consequential relief of permanent injunction restraining the defendants from alienating the property in dispute in any manner.

The aforementioned suit was based on the basis of the Will dated 30.8.1960 (Ex.P-1) alleged to have been executed by Dropati Devi. The plaintiffs also sought for setting aside the mutation sanctioned in favour of defendants on 18.12.1981 with a consequential relief of

permanent injunction against the defendant from alienating the suit property. It was stated that Daropti Devi used to live with the plaintiffs as well as with the father of the plaintiffs and used to take food etc. from the plaintiffs. The plaintiffs served her during her life time, being pleased of the services rendered by the plaintiffs, she executed a Will dated 30.8.1960 (Ex.P-1). Thereafter, she executed a Mukhtiarnama/attorney in favour of father of the plaintiffs Zilla Ram. After the death of Daropti Devi, mutation of the property was to be sanctioned in favour of plaintiffs but the defendants produced a forged and fabricated Will dated 09.11.1972 (Ex.D7) before the Assistant Collector 1st Grade, Kalka and on the basis of that Will, the mutation was sanctioned in favour of the defendants. The Will dated 09.11.1972 registered on 10.11.1972 executed in favour of defendants was not only forged and fabricated but the result of undue influence and coercion.

Upon notice, the defendants contested the aforementioned suit by raising preliminary objections regarding the constitution of Joint Hindu Family and denied that the property was joint Hindu Family property and it was also denied that Daropti Devi had ever executed a Will dated 30.8.1960 but placed reliance on the Will dated 09.11.1972 registered on 10.11.1972.

From the pleadings of the parties, following issues were framed:-

- “1. Whether the plaintiffs and the defendants related to each other and constitute a Joint Hindu Family and the suit property is a Joint Hindu Family Property and is in the Joint Possession of the parties ? OPP

2. Whether Smt. Daropati Devi executed a valid Will in favour of the plaintiffs on 30.8.1960? If so, to what effect ? OPP
3. Whether Mukhtiar Nama and the Will dated 30.8.1960 was duly cancelled by Smt. Daropati Devi ? If so, to what effect ? OPD
4. Whether Smt. Daropati Devi executed a valid Will in favour of defendants on 09.11.1972 which was registered on 10.11.1972 ? If so, to what effect ? OPD
5. Whether the deceased Daropati Devi never lived with the defendants in her life time ? If so, to what effect ? OPP
6. Whether the order dated 18.12.1980 passed by the Assistant Collector 1st Grade, Kalka, regarding sanction of mutation is illegal, null and void and ineffective as far as rights of the plaintiffs are concerned as alleged in para No.15 of the plaint ? If so, to what effect ? OPP
7. Whether the suit is not maintainable in the present forms alleged in Additional pleas No.1? OPD
8. Whether the plaintiffs have no locus standi to file the present suit ? OPD
9. Whether the defendants are closed relations of deceased Daropati Devi and are only her legal heirs ? OPD.
10. Relief.”

On the basis of the preponderance of the evidence, the trial Court dismissed the suit by holding that the plaintiffs did not have locus standi by holding that the Will dated 30.8.1960 was not executed by Daropati Devi but on issue No.4 (wrongly typed as issue No.5), gave the findings that even the will dated 09.11.1972 had not been produced. It is against the said finding the present appeal has been filed for the same very findings were reiterated in appeal by the lower Appellate Court.

Learned counsel for the appellants submits that the lower Appellate had no occasion to render the findings on issue No.4 (wrongly mentioned as issue No.5) against the appellants once the suit was dismissed on the grounds of locus standi.

On the other hand, learned counsel appearing on behalf of respondents-plaintiffs submits that the appeal is not maintainable as no decree has been passed against the appellants and findings do not have any adverse effect on the rights of the appellants.

I have heard learned counsel for the parties and perused the case file carefully and of the view that in view of the ratio decidendi culled out by this Court in **Hari Parshad's** case (supra), the appeal against the findings rendered on particular issue even if decree is not against the affected party, the same can be challenged in other words would be maintainable.

As regards the findings on issue No.5, with regard to the Will, no attesting witness of the Will had been examined, therefore, there was no compliance of Section 68 of Indian Evidence Act. DW5 Chaman Singh stated that Daropati Devi appended her thumb impression in his presence and therefore once the Registrar proved the fact, non-compliance of Section 68 of Indian Evidence Act would not come in the way of the appellants as all the other witnesses had died.

I am of the view that examination of the Registrar (DW5) would not be sufficient for discharging the onus as the expert Mr. N.K. Jain on examination had submitted that the thumb impression of Daropati Devi

on the on the Will was smudged, therefore, the Will in my view has not been proved. The findings rendered by the lower Appellate Court and the Court below only confined for the adjudication for the dispute with regard to the property thus would only be confined to the matter in lis between the parties.

As per the aforesaid observations, I find that no ground for interference in the findings rendered by the Courts below on issue No.4 against the appellants-defendants.

In my view no substantial question of law arises for adjudication.

Dismissed.

January 11, 2018
Vijay Asija

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No