

RSA No.2365 of 1992 (O&M)

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

RSA No.2365 of 1992 (O&M)

Date of decision:23.04.2018

Dinesh Kumar

... Appellant

Vs.

Shanti Devi (since deceased) through LRs and others ... Respondents

COCP No.1061 of 2000 (O&M)

Shanti Devi (since deceased) through LRs

... Petitioner

Vs.

Dinesh Kumar and others

... Respondent

XOBJC Nos.4 and 8-C of 1994

Dinesh Kumar

... Petitioner

Vs.

Shanti Devi (since deceased) through LRs

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr.Ankur Bansal, Advocate
for the appellant.

None for the respondents.

AMIT RAWAL J.

This order of mine shall dispose of Regular Second Appeal
bearing No.2365 of 1992, COCP No.1061 of 2000 and XOBJC No.4 and 8-
C of 1994.

The facts are being taken from RSA No.2365 of 1992 as all the aforementioned controversy has arisen from the decision of civil suit no.372 of 1984.

Shanti Devi widow of Hans Raj instituted the suit for declaration claiming ownership in respect of following immovable properties (five in number) of late Sh. Hans Raj:-

- “i) House No.WB-27, Khajooran Gali, Jalandhur.*
- ii) House No.WB-22, Khajooran Gali, Jalandhur.*
- iii) Two shops and Chaubara situated in Ranik Bazar, Jalandhur under tenancy bounded : East Rainik Bazar, Jalandhur under tenancy bounded : East Rainik Bazar; West Gainda Mal, North: Shop Muniari; South: Shop Muniari, bearing property No.WB-1 (B-V-170-M3/17E).*
- iv) One shop situated in Rainik Bazar, Jalandhur under tenancy bounded: East:Shop Lyalpurian; West: Rainik Bazar, North : Shop Bajaj (Cloth) South:Chowk.*
- v) ½ share out of khasra No.17//112(2-17), 14(6-5), 243 (42-18), 244(27-14), 254-1(4-8), 245(112-14), 258(1-1), 246 (46-4), 259(1-1), 260/2(4-3), 249-5, 1364(3-3), 1368(0-8)-3-11.”*

on the premise that Hans Raj, was owner of the aforementioned properties, who died on 3.2.1974, had executed a Will dated 9.1.1974 in respect of all the properties. Shanti Devi laid claim to all the properties as per the Will, *ibid*, executed by Hans Raj except two shops alongwith chaubara No.WB-1,

Rainik Bazar Jalandhur which was bequeathed in favour of defendant No.1/Sohan Lal as the recital of the Will envisaged that after death of plaintiff, Jagan Nath son of Hans Raj, was to succeed to the properties. Jagan Nath was permitted to live in house No.WB-22 as licensee. However, Jagan Nath died and the possession continued with Dinesh, his son and widow Aarti alias Sudesh Rani/defendant no.3. The dispute arose between the plaintiff and defendants no.1 and 3 regarding the property. It is on account of that fact, necessity arose to claim declaration and permanent injunction.

The suit was contested by defendants no.2 and 3, appellant herein, by denying that Sohan Lal-defendant no.1 was son of Hans Raj. He was “pichhlag” son of Hans Raj, meaning thereby that Shanti Devi when married Hans Raj had brought alongwith her Sohan Lal. The execution of the Will dated 09.01.1974 was denied but propounded another Will dated 01.02.1974 as earlier Will was cancelled. The second Will dated 01.02.1974 was registered and as per the aforementioned Will, the plaintiff was given “life interest” in the property to receive the benefits from House No.WB-27 without any power to sell or mortgage the property which on her demise was to devolve upon Jagan Nath.

Since the parties were at variance, the trial Court framed the following issues:-

“1. Whether deceased Hans Raj executed a valid Will on 9.1.74? OPP

1A Whether Sohan Lal defendant is son of Hans Raj

deceased? OPD

1B Whether Sohan Lal defendant is “Pichhlag” son of Hans Raj deceased? If so its effect? OPD

1C Whether the suit property has been correctly described in the plaint? OPP

2. Whether said Hans Raj also executed another Will dated 1.2.74. It so, what effect? OPD

3. Whether the plaintiff is entitled to the mandatory injunction prayed for? OPP

4. Relief.”

The plaintiff -Shanti Devi (since deceased) placed on record Will dated 09.01.1974 (Ex.P1); plans of suit property as Ex.P2 to Ex.P5 and the school leaving certificate of Sohan Lal as Ex.PX. but did not examine any witnesses in support of the aforementioned Will.

On the contrary, defendants brought on record the Will dated 01.02.1974 as Ex.D1 and in order to prove the same, examined various other witnesses including DW3-Gurmukh Singh and DW4- Ved Parkash attesting witnesses of the Will, Satwant Singh DW5 scribe of the document.

The trial Court on the basis of the aforementioned documentary evidence brought on record partly decreed the suit on the premise that the plaintiff failed to prove the Will dated 09.01.1974 by holding that defendants had proved the Will dated 01.02.1974 granting declaration that plaintiff got the life interest in the estate/property, i.e. house no.WB 27 near Chowk Babu Labh Singh with a rider that she would not be entitled to

transfer or encumber it.

Aggrieved of the aforementioned judgment and decree dated 03.08.1987, appeal bearing No.304 of 1991 titled as “Shanti Devi Vs.Sohan Lal and others” and cross objection bearing No.123 of 1991 by Sohan Lal were filed. The Lower Appellate on the basis of stand taken in the written statement filed by defendants no.2 and 3 regarding the admission of the Will dated 09.01.1974, though same was cancelled, reversed the findings of the trial Court by holding that the plaintiff had discharged the onus as the Will was admitted and modified the judgment and decree of the trial Court by granting the joint possession to the extent of 1/3 share alongwith defendants No.2 and 3/appellant qua properties (ii)(iv) and (v) described in head note of plaint, whereas, with regard to property no.(i) and (iii), she was further declared to be sole owner of the property described as (i) of the plaint, whereas, Sohan Lal to be owner of the property mentioned at sr.no.(iii) of the plaint. The cross objections filed by Sohan Lal were dismissed. It is in this background of the matter, the appeal at the instance of defendants no.2 and 3 and cross objections at the instance of Sohan Lal have been filed.

Mr. Ankur Bansal, learned counsel appearing on behalf of the appellant submitted that the Lower Appellate Court has committed illegality and perversity in not reading the contents of Will dated 01.02.1974 which was a registered document. It specifically provided that previous Will dated 09.01.1974 executed by Hans Raj was cancelled and there was equal distribution in respect of estate of Hans Raj to all the legal heirs. There was also misinterpretation of the expression “Life Interest” and “In Lieu of

Maintenance”. It was a case where provisions of Section 14(2) of Hindu Succession Act, (hereinafter referred to as “the Act”) would have applied instead of Section 14(1) of the Act.

In support of his contention, relied upon the latest judgment rendered by the Supreme Court of India in **Mr. Ranvir Dewan Vs. Mrs. Rashmi Khanna and another 2018(1) RCR (Civil) 193**, wherein by interpreting the expression “Life Interest” the Hon'ble Supreme Court laid down that beneficiary was given limited right in the property which would not ripen in the full ownership, in other words, he submitted that ratio decidendi culled out in judgment rendered by the Supreme Court of India in **V.Tulasamma and others Vs. Sesha Reddy (dead) by LRs (1977) 3 SCC 99** would not apply.

Shanti Devi had filed an application for amendment of the plaint by incorporating the certain properties and impleadment of other tenants, for, she claimed right in the rent which was declined. In the absence of any amendment in the written statement, the Lower Appellate Court ought not to have granted the aforementioned relief and prayed for setting aside the judgment and decree passed by the Lower Appellate Court by restoring the judgment and decree of the trial Court.

The Lower Appellate Court has misread the contents of the written statement as there was no direct admission of the Will, for, it was clarified that Hans Raj had executed a Will dated 09.01.1974 but the same was cancelled/revoked substituted by Will dated 01.02.1974. There was no

suspicious circumstances as no contrary evidence regarding his ailment had been proved on record for enabling the Court to form the opinion that Will dated 01.02.1974 was surrounded by suspicious circumstances, particularly when the finding of the trial Court with regard to execution of the Will dated 01.02.1974 Ex.D1, has been upheld. Sohan Lal had not set up any counter claim or independent suit regarding declaration of his title, therefore, the Additional District Judge could not have accorded him co-ownership in respect of the property mentioned at sr. no.(iii).

He next contended that ratio decidendi culled out by the Hon'ble Supreme Court in Jupudy Pardha Sarathy Versus Pentapati Rama Krishna and others, 2016(2) Supreme Court Cases 56, wherein principles culled out in V.Tulsanama's case(supra) had been reiterated, would not apply to the facts and circumstances of the case, for, in para 28 of the judgment rendered in Jupudy Pardha Sarathy's case(supra), the Court while interpreting the contents of the Will found that wife was given a right in the property as maintenance,i.e., “In Lieu of Maintenance” as expression used in the explanation of Section 14(1) of the Act. However, both the Wills, particularly Will dated 01.02.1974 did not envisage any expression “maintenance”. It was “life interest” which should not ripen in the full ownership. In the cross-objections set up by Sohan Lal, it has been averred that findings given by the Court vis-a-vis pichhlag son be set aside as he was born out from the loin of Shanti and Hans Raj.

There is no representation on behalf of the respondents which

fact is noticed by this Court in the order dated 07.03.2018, though earlier was represented by Mr. S.S.Majithia, even when after hearing the arguments judgment reserved, there was no representation on their behalf.

COCN No.1061 of 2001

The contempt petition has been filed by Shanti Devi (since deceased) now represented by LRs on the premise that order dated 08.04.1996 restraining the appellant from further alienation of the property in dispute and order dated 30.04.1996 vide which order dated 08.04.1996 passed in C.M.No.1275-C of 1996 had become absolute was violated as the appellant changed the nature of the suit property by converting the house portion into a shop and alienated the same for gain.

I have heard the learned counsel for the appellant, appraised the judgments and decrees as well as record of both the Courts below and of the view that there is force and merit in the submissions of Mr. Bansal.

It would be in the fitness of things to refer to paragraphs 6 and 7 of the written statement filed on behalf of defendants no.2 and 3 which read thus:-

“6. In reply to para no.6 of the plaint it is submitted that Hans Raj executed a Will dated 09.01.1974 but this Will is not valid as he subsequently executed a registered valid Will dated 01.02.1974 and via this Will he cancelled his previous Will dated 09.01.1974. Now Will dated 01.02.1974 is the only valid Will and last Will according to his wishes (copy of Will is enclosed).”

7. *Para no.7 of the plaint is wrong. Hans Raj cancelled his Will dated 9.1.1974 and executed a valid Will dated 1.2.1974 and according to his last Will dated 01.02.1974, the plaintiff is given limited life long right to get profits of the house no.W.B.27 situated near Chowk Babu Labh Singh, Jalandhar. But she is debarred from selling or mortgaging the same and after her death Jagan Nath will become the owner of the house. Further according to the Will two shops (double storey) situated near Babu Labh Singh Chowk were given to Sohan Lal on limited right only and he is also debarred from selling or alienating the same during his life time and after the death of Sohan Lal his Pichhlag son, his heirs will become the owners on the said property. All other property movable and immovable has been given to Jagan Nath alias Jagga. Thus, since Jagan Nath died, therefore, the defendants no.2 and 3 who are legal heirs of Jagan Nath has become the owners of the movable as well as immovable properties left by the deceased Hans Raj including the Bank accounts.”*

The aforementioned pleadings leads to irresistible conclusion that finding of the Lower Appellate Court is not only perverse but erroneous, for, there was no direct admission of Will dated 09.01.1974 but was explained. The plaintiff miserably failed to discharge the onus with regard to the provisions of Section 68 of Indian Evidence Act and Section 63(c) of Indian Succession Act. It was categorically stated that Will dated

09.01.1974 was cancelled and substituted by registered Will dated 01.02.1974. The plaintiff has not been able to rebut the contents of second Will, for, in the first Will, testator had given two shops to Sohan Lal with a rider that he could not sell or transfer the property during his life time and on his demise, the same would be inherited by his pichhlag son, whereas, Jagan Nath, was totally excluded. The second registered Will was substituted by previous Will, whereby, the 'Life Interest' in the house No.WB-27 was given to Shanti Devi, with a rider that she could not alienate or encumber the property during her life time and after her demise, it would devolve upon Jagan Nath and two shops had been given to Sohan Lal. All other movable properties had been given to Jagan Nath alias Jagga.

It would be apt to reproduce the findings rendered in paragraphs 36, 37, 41, 43, 44, 45, 46 by the Supreme Court of India in **Mr. Ranvir Dewan's case (supra)** which read thus:-

“36. It is a settled principle of law that what the testator intended to bequeath to any person(s) in his Will has to be gathered primarily by reading the recitals of the Will only.

37. As mentioned above, reading of the Will would go to show that it does not leave any kind of ambiguity therein and one can easily find out as to how and in what manner and with what rights, the testator wished to give to three of his legal representatives his self acquired properties and how he wanted to make its disposition.

41. Reading of the aforementioned principle of law laid down in the cases of *V. Tulasamma and Sadhu Singh (supra)*, it is clear that the ambit of [Section 14\(2\)](#) of the Act must be confined to cases where property is acquired by a female Hindu for the first time as a grant without any pre-existing right, under a gift, will, instrument, decree, order or award, the terms of which prescribe a “restricted estate” in the property. Where, however, property is acquired by a Hindu female at a partition or in lieu of right of maintenance, it is in virtue of a pre-existing right and such an acquisition would not be within the scope and ambit of [Section 14\(2\)](#) of the Act, even if the instrument, decree, order or award allotting the property prescribes a “restricted estate” in the property.

43. A fortiori, plaintiff No.2-late Mrs.Pritam received only “life interest” in the suit house by the Will dated 24.06.1986 from her late husband and such “life interest” was neither enlarged nor ripened into an absolute interest in the suit house and remained “life interest”, i.e., “restricted estate” till her death under [Section 14\(2\)](#) of the Act. This we say for following factual reasons arising in the case.

44. First, the testator-Mr.Dewan being the exclusive owner of the suit house was free to dispose of his property the way he liked because it was his self earned property.

45. Second, the testator gave the suit house in absolute ownership to his son and the daughter and conferred on them absolute ownership. At the same time, he gave only “life interest” to his wife, i.e., a right to live in the suit house which belonged to son and daughter. Such disposition, the testator could make by virtue of [Section 14 \(2\)](#) read with [Section 30](#) of the Act.

46. Third, such “life interest” was in the nature of “restricted estate” under [Section 14\(2\)](#) of the Act which remained a “restricted estate” till her death and did not ripen into an “absolute interest” under [Section 14\(1\)](#) of the Act. In other words, once the case falls under [Section 14\(2\)](#) of the Act, it comes out of [Section 14\(1\)](#). It is permissible in law because [Section 14\(2\)](#) is held as proviso to [Section 14\(1\)](#) of the Act.”

In the present case also, Shanti Devi had not been given the property “In Lieu of Maintenance” but “Life Interest”, therefore, she could not acquire full ownership as per the ratio decidendi culled out in **Jupudy Pardha Sarathy's case (supra)**, for, recital of the Will in the aforementioned case had given the widow “Life Maintenance” in lieu of maintenance.

There is stark difference between the expressions “In Lieu of Maintenance” and “Life Interest”. Had the recital contained the expression “In Lieu of Maintenance”, probably there would not have been any force in

the submissions of Mr. Bansal as the said right had ripened in full ownership in view of the law laid down by the Hon'ble Supreme Court in **Jupudy Pardha Sarathy's case (supra)** and **V.Tulasamma's case (supra)** in favour of Shanti Devi as per the provisions of Section 14(1) of the Act, therefore, recital in each and every Will would enable the Court to form opinion whether widow or wife of the deceased would acquire the right or right given to her would ripened to full ownership as per the provisions of Section 14(1) of the Act or “Life Interest” as per Section 14(2) of the Act. Once the Lower Appellate Court had already upheld the Will dated 01.02.1974, there was no occasion for granting the right to Shanti Devi in respect of the property (ii) (iv) and (v) alongwith other heirs of Jagan Nath who died leaving behind appellant and full ownership in respect of (i) and co-ownership with Sohan Lal in respect of (iii). The findings are not based upon any justification, but are bereft of discussion/contents of the Will. On the contrary, the trial Court after noticing the contents of both the Wills had correctly decreed the suit in part in favour of the plaintiff by granting her “Life Interest” in the property WB-27 near Chowk Babu Labh Singh with a rider not to transfer or encumber the same and as per the Will, after her demise, it would devolve upon Jagan Nath, for, the interest of Sohan Lal had been kept intact by bequeathing two properties as per the registered Will dated 01.02.1974. Both the attesting witnesses and scribe have complied with the provisions of Section 63(c) of Indian Succession Act, in other words, defendants discharged the onus with regard to Section 68 of

Indian Evidence Act for proving the Will.

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the ratio decidendi culled out by five learned Judges of the Hon'ble Supreme Court in **Pankajakshi (dead) through LRs and others Vs. Chandrika and others AIR 2016 SC 1213**, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure and decision thereof could be without framing the substantial questions of law. The Constitutional Bench of Hon'ble Supreme Court held that the decision in **Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and others 2001(4) SCC 262** on applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back.

For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in Pankajakshi 's case (supra) reads thus:-

“Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High Court in the case of Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)] cannot be sustained and is

thus overruled." [at paras 27 - 29]"

"27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil

Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force.”

Therefore, I do not intend to frame the substantial questions of law while deciding the appeal aforementioned.

The finding of the Lower Appellate Court is set aside and that of trial Court is restored. The appeal stands allowed. The cross objections are hereby dismissed. No ground is made out for interference in the contempt petition as the appeal is allowed in favour of the appellant.

(AMIT RAWAL)
JUDGE

23.04.2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No