

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

1. RSA No.1495 of 2012 (O&M)
Date of decision : 20.09.2018

K. Pooja Dodd and another

...Appellants

Versus

Devinder Singh Dodd and others

...Respondents

2. RSA No.2739 of 2012 (O&M)
Date of decision : 20.09.2018

Daljit Singh Dodd

...Appellant

Versus

Devinder Singh Dodd and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Puneet Jindal, Sr. Advocate with
Mr. Varun Goyal, Advocate for the appellants
(In RSA No.2739 of 2012)

Mr. Animesh Sharma, Advocate for the appellants.
(In RSA No.1495 of 2012)

Mr. Ashish Kapoor, Advocate for respondents.

ANIL KSHETARPAL, J. (ORAL)

By this common judgment, two second appeals bearing RSA
Nos.1495 and 2739 of 2012, shall stand disposed of, as both are arising
from a single suit and issues which needs determination are same.

The plaintiff-respondent Devinder Singh filed a suit for declaration that he is owner in possession of the premises No.326, Model Town, Jalandhar City on the basis of the registered Testament dated 07.12.1998 executed by his father Sardar Sahib Gurbaksh Singh, who died on 17.09.2001.

The defendants, who are also children of late Sh. Gurbaksh Singh contested the suit and pleaded that Gurbaksh Singh was not the owner of the property, rather, it was mother of the parties i.e., Lajwant Kaur who was owner of the property in dispute.

In replication, the plaintiff pleaded that Lajwant Kaur who died on 16.11.1979 had executed a Testament in favour of her husband Gurbaksh Singh on 17.03.1979.

It is unfortunate that in spite of repeated observations made by the Court, the Courts do not frame proper issues as required under Order 14 of the Code of Civil Procedure. Order 14 of the Code of Civil Procedure provides that issues are required to be of two kind, first, issues of fact and second, issues of law. Each material proposition affirmed by one party and denied by another, shall form the subject matter of the distinct issue. However, subordinate Courts are overholding the mandate of law as provided in the Code of Civil Procedure.

Both the Courts after examining the evidence, have concurrently recorded a finding of fact that the testament executed by Late Smt. Lajwant Kaur in favour of her husband dated 17.03.1979 as also the testament dated 07.12.1998 executed by Gurbaksh Singh, have been proved in accordance with law.

Learned counsel for the appellants has submitted that the testament dated 17.03.1979 is not part of the pleadings and, therefore, the Court could not have gone into the aforesaid issue. He submitted that for the first time in the replication, the Testament dated 17.03.1979 was put forth and pleaded and the defendants did not get an opportunity to rebut the aforesaid pleadings. He further submitted that no evidence has been led to prove that the signatures of Smt. Lajwant Kaur exist on the Testament dated 17.03.1979 Ex.P3. Hence, he submitted that there is non compliance of second part of Section 69 of the Indian Evidence Act, 1872.

On the other hand, learned counsel for the plaintiffs-respondents has pointed out that Devinder Singh, plaintiff when appeared in the evidence, has identified the signatures of late Smt. Lajwant Kaur, her mother on the testament. He while drawing attention of the Court to the cross-examination, has submitted that but for bald suggestion, the defendants did not cross-examine the plaintiff on this aspect. He further submitted that since the plaintiff was not knowing that the defendants would be even disputing the ownership of their father, therefore, the plaintiff filed a suit claiming the property from the father on the basis of testamentary succession but since the objection was raised with regard to the ownership of the father, therefore, in replication, the plaintiff had to setup and plead the Testament executed by Late Smt. Lajwant Kaur.

This Court has heard the learned counsel for the parties at length and with their able assistance gone through the judgments passed by both the Courts below and the record.

As regards the lack of pleadings, it may be noted that although

strictly speaking replication is not part of the pleadings, however, there is no bar in filing the additional pleadings. In the present case, the replication can be treated as part of additional pleadings. The defendants could also file a response thereto with leave of the Court which has not been done. Still further, before framing of the issues, the parties were alive to the dispute involved in the present case. Hence, the replication, in the facts of the present case, cannot be held to be not part of the pleadings. No doubt, in the present case, the replication was filed after the amendment in the Code of Civil Procedure w.e.f. 01.07.2002 but since the present suit was instituted on 18.10.2001, therefore, as far as procedural law is concerned, it shall be governed unamended Code of Civil Procedure, 1908

As regards second argument of the learned counsel for the appellants that Section 69 of the Indian Evidence Act, has not been complied with to prove the testament of Lajwant Kaur, it may be noted that the testament of Lajwant Kaur which is Ex.P3 is attested by two attesting witnesses namely Gurdas Singh and Lieutenant Col. Kumar Singh. Since, both the witnesses have died by the time the case came up for evidence, therefore, daughter of Gurdas Singh was examined as PW3 whereas Brig. Varinder Singh son of Lieutenant Col. Kumar Singh has been examined as PW10, who have identified the signatures of both the marginal witnesses.

Argument of learned counsel that second part of Section 69 of the Indian Evidence Act has not been complied with, is also without substance as Devinder Singh, the plaintiff, son of Lajwant Kaur when appeared in evidence has specifically stated that he identifies the signatures of Lajwant Kaur on the testament dated 17.03.1979. The defendants did not

lead any evidence to prove that the signatures of Lajwant Kaur have been forged. Still further, it is not in dispute that after the death of Lajwant Kaur, the property was transferred/mutated in the Municipal records in favour of Gurbaksh Singh and there was no challenge to the testament executed by Lajwant Kaur during the lifetime of Gurbaksh Singh who remained alive for approximately 21 years.

Hence, in the considered opinion of this Court, Section 69 of the Indian Evidence Act, has been complied with. It is not in dispute that both the attesting witnesses of the testament dated 07.12.1998 executed by late Sh. Gurbaksh Singh has been examined and the Testament has been proved in accordance with the provision of Section 68 of the Indian Evidence Act. Hence, there is no ground to interfere.

Both the Regular Second Appeals are dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

20.09.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No