

In the High Court of Punjab and Haryana at Chandigarh

Date of Decision:11.1.2018

RSA-2162 of 2012(O&M)

Baldev

---Appellant

vs.

Kishan Lal @ Kallar and others

---Respondent

RSA-3183 of 2015(O&M)

Baldev

---Appellant

vs.

Smt. Bhagwan Devi and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.Ashok Kumar Khubbar, Advocate
for the appellant in both the appeals

Mr. Jatin Hans, Advocate
for the respondents.

Rekha Mittal, J.

This order will dispose of RSA No. 2162 of 2012 titled “Baldev vs. Kishan Lal @ Kallar and others' and No. 3183 of 2015 captioned “Baldev vs. Smt. Bhagwan Devi and another” as both the appeals relate to

inheritance to the estate left behind by Tiken Lal. For the sake of convenience, facts are taken from RSA 3183 of 2015.

Briefly stated, Baldev son of Tiken Lal filed suit for declaration that the plaintiff and defendant No. 2 are owners to the extent of 2/3rd share in house bearing No. 40 Municipal Unit No. E-447/3H/16/1 marked ABCD in red colour in the site plan attached with the plaint. It is averred that Will No. 171 registered on 8.6.1999 in favour of defendant No. 1 is illegal and has been procured by playing fraud and misrepresentation and does not affect right of the plaintiff in the suit property. The suit property was earlier owned and possessed by Chander Bhan son of Gopal Dass and after his death, same was inherited by Tiken Lal, father of the plaintiff/appellant. The suit property is coparcenary property in the hands of Tiken Lal. Tiken Lal died on 1.9.2001 and after his death plaintiff and defendants became owners in possession of the suit property in equal shares. In the month of March 2005, plaintiff came to know that defendant No. 1 procured the aforesaid registered Will in her favour. Tiken Lal has no right to will away the suit property being coparcener. He was 80-82 years old and suffering from disease and had lost balance of mind rendering him unable to think about his good or bad. No reason for excluding the plaintiff and defendant No. 2 from inheritance has been mentioned in the Will.

Respondent/defendant No. 1 filed the written statement raising certain preliminary objections inter alia maintainability of the suit, cause of action, locus standi, suit being bad for mis-joinder and non-joinder of necessary parties, time barred, court fee and concealment of material facts. She has claimed herself to be owner in possession of the suit property on

the basis of registered Will dated 8.6.1999 executed by Tiken Lal. Defendant No. 2 did not file separate written statement but suffered a statement that written statement filed by defendant No. 1 be treated as written statement on his behalf.

The controversy between the parties led to framing of following issues:-

1. Whether the plaintiff alongwith proforma defendant is owner in possession of the disputed house to the extent of 2/3rd share, being the legal heirs of deceased Tilak Raj on the grounds as alleged in the plaint? OPP
2. Whether the registered 'Will' bearing No. 171 dated 8.6.1999 is wrong, illegal, null and void and not binding upon the rights of the plaintiff on the grounds as mentioned in the plaint?OPP
3. Whether the suit of the plaintiff is not maintainable in the present form? OPD
4. Whether plaintiff has no cause of action or locus standi to file the present suit? OPD
5. Whether the suit of the plaintiff is barred by limitation?OPD
6. Relief.

The trial court permitted the parties to adduce evidence in support of their respective contentions. The appellant-plaintiff examined Sukhdyal Singh PW2 and himself appeared in the witness box. On the other hand, respondents/defendants examined Mahender Chaudhary Deed Writer DW1, Naraian Singh DW2 and Smt. Bhagwan Devi herself appeared in the

witness box.

The learned trial court considered issues No. 1 and 2 jointly and answered issue No. 1 in favour of the appellant whereas issue No.2 was decided in favour of the defendants. Issues No. 3 and 4 were determined against the respondents/defendants as not pressed but issue No. 5 was answered in favour of the plaintiff and against the defendants. Eventually, suit of the appellant was decreed partly and he was declared to be owner in possession of 1/4th share in the suit property and respondents/defendants were restrained from alienating the share of the plaintiff in any manner. A preliminary decree was passed to the effect that the appellant is entitled to get possession on the specific portion by way of partition.

Feeling aggrieved against the judgment and decree passed by the trial court, Bhagwan Devi preferred an appeal which came to be decided by the Additional District Judge, Bhiwani. The court in appeal set aside findings recorded by the trial court on issue No. 1 but the findings on the question of Will were affirmed. It was held that the appellant has failed to prove that property in the hands of Tiken Lal was coparcenary and he had no right to will away his property; the appellant has no locus standi and cause of action to file the suit and the suit is not maintainable.

Feeling dissatisfied with verdict of the first appellate court, present appeal has been preferred by Baldev appellant.

Counsel for the appellant has sought to assail findings of the courts below on issue No. 2 by contending that Smt. Bhagwan Devi failed to prove Will dated 8.6.1999 in accordance with law. For this purpose, it is argued that testimony of Narain Singh DW2 is not worthy of credence and

reliance as his name was not typed beneath the will by the Deed Writer and Narain Singh affixed his signatures beneath the name of Chandan Singh (typed).

Another submission made by counsel is that the Will propounded by Smt. Bhagwan Devi is surrounded by suspicious circumstances which the courts below had failed to notice and appreciate. To bring home his contention, it is argued that Kishan Lal another son of the deceased/testator of the Will actively participated in execution of the Will who rather called the attesting witness Narain Singh. Smt. Bhagwan Devi was also present when the Will was allegedly got prepared by Tiken Lal as deposed by Mahender Chaudhary, Deed Writer DW1.

Counsel representing the respondents, on the contrary, has supported the consistent findings recorded by the courts below upholding plea of the respondents that Tiken Lal executed a valid and genuine registered Will dated 8.6.1999 in favour of his wife in a sound disposing mind. It is further argued that as the appellant did not prefer an appeal or cross objections in the appeal preferred by Smt. Bhagwan Devi to assail findings of the trial court on issue No. 2 pertaining to the Will in question, the appellant has rendered himself incompetent to assail findings on issue No. 2. It is further argued that error committed by the trial court, holding the suit property to be coparcenary in the hands of Tiken Lal, was rightly corrected by the court in appeal. The last submission made by counsel is that the present appeal does not give rise to any substantial question of law to be decided in regular second appeal.

The appellant claimed right in the suit property on the premise

that the same is coparcenary having been inherited by Tiken Lal from his father Chander Bhan. Counsel for the appellant is fair enough to concede that there is no evidence on record to prove the suit property to be coparcenary except admission by the contesting party. As per the settled position in law, every property is presumed to be self acquired property unless proved otherwise. Equally settled is that admission by a contesting party is not sufficient to prove coparcenary nature of the property. In this view of the matter, challenge to findings of the court in appeal, setting aside those of the trial court, with regard to nature of the suit property is unfounded and liable to be rejected.

This brings the court to the contentions raised by the appellant to assail the Will dated 8.6.1999 purported to be executed by Tiken Lal in favour of his wife. There is no dispute that the appellant is the son of Tiken Lal and the respondents/defendants are the widow and another son of erstwhile owner of the suit house. It is undisputed position of the case that challenge to the Will in question at the behest of the appellant was not accepted by the trial court in view of its findings on issue No. 2 which was answered against the appellant and in favour of the respondents. Counsel for the appellant has not denied that appellant neither filed an appeal nor objections in the appeal preferred by Smt. Bhagwan Devi. Under the circumstances, the appellant has lost his right to challenge the findings of the courts below upholding the Will in question to be a genuine testament executed by Tiken Lal in favour of his wife, to the exclusion of other class-I heirs. Not only this, the learned trial court in concluding lines of para 18 has noticed that PW1 has admitted in his cross examination that the Will in

question was duly executed by his father Tiken Lal. Once the appellant has admitted that the Will in question was duly executed by his father Tiken Lal, it is not open for him to raise any issue with regard to correctness or otherwise of the Will in question.

There cannot be any dispute about the settled position in law that the Will is to be proved by its propounder. Smt. Bhagwan Devi examined one of the attesting witnesses of the Will namely Narain Singh. Counsel for the appellant made a detailed reading of the facts elicited in examination in chief and cross examination of Narain Singh. However, counsel failed to point out any discrepancy in his statement much less to contend that his testimony does not satisfy the requirements of Section 68 of the Indian Evidence Act. He has also failed to point out any materials on record to show that testimony of Narian Singh is not worthy of credence and reliance. Under the circumstances, consistent findings recorded by the Courts below accepting the Will in question to be executed by the deceased do not warrant intervention. Even otherwise, the two circumstances pointed out by counsel for the appellant to challenge validity of the Will are not at all sufficient to interfere in the consistent findings recorded by the courts below. Kishan Lal is not a beneficiary under the Will which has been executed in favour of Bhagwan Devi. Mahender Chaudhary, Deed Writer DW1 has sufficiently explained as to why name of Chandan Singh was typed but later signatures of Narain Singh were obtained as an attesting witness of the Will. In this view of the matter, there is no merit in contention of the appellant that Will is surrounded by suspicious circumstances.

No other point has been raised.

For the foregoing reasons, appeal No. 3183 of 2015 is liable to be dismissed and ordered accordingly. As a result, the judgment and decree passed by the court in appeal are ordered to be affirmed.

RSA No. 2162 of 2012 has been preferred by the appellant to assail the judgment and decree dated 13.1.2012 passed by the Additional District Judge, Bhiwani whereby appeal preferred by Kishan Lal @ Kallar against the judgment and decree dated 12.9.2009 passed by the trial court was accepted and suit titled “Kishan Lal vs. Baldev and others” for partition by way of possession in respect of property bearing MC Unit No.110 was allowed by setting aside the judgment and decree passed by the trial court.

The sole submission made by counsel for the appellant is that suit filed by respondent Kishan Lal for partition of the aforesaid property i.e. Unit No. 110 is bad being for partial partition. It is further argued that as Tiken Lal, predecessor-in-interest of the appellant and Kishan Lal left behind two houses namely Unit No. 110 and 40 (subject matter of RSA-3183 of 2015) Kishan Lal respondent was not competent to seek partition of one of the properties.

Counsel for the respondents would urge that in case RSA No. 3183 of 2015 filed by the appellant is not allowed by the court, nothing survives for consideration in the appeal preferred by Baldev to assail the judgment and decree dated 12.9.2009.

In view of my findings recorded in RSA No. 3183 of 2015, objection raised by the appellant in respect of partial partition no longer survives as the other property left behind by deceased Tiken Lal is held to

be ownership of Smt. Bhagwan Devi, widow of Tiken Lal.

In view of what has been discussed hereinabove, the appeal fails and is accordingly dismissed leaving the parties to bear their own costs.

(Rekha Mittal)
Judge

11.1.2018
paramjit

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No