

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

RSA No.943 of 2012 (O&M)

Date of decision:24.04.2018

Om Parkash

... Appellant

Vs.

Daya Nand and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Naveen S. Bhardwaj, Advocate
for the appellant.

Mr. Jagjeet Beniwal, Advocate
for the respondents.

AMIT RAWAL J. (Oral)

C.M.No.2471-C-2012

For the reasons stated in the application which is duly supported by an affidavit, delay of 88 days in filing the appeal is condoned.

C.M. stands disposed of.

RSA No.943 of 2012 (O&M)

The appellant-plaintiff is in Regular Second Appeal against the concurrent findings of facts and law, whereby, suit for declaration to the effect that plaintiff is the owner in possession by virtue of un-registered Will dated 25.08.2002, has been dismissed by the trial Court and upheld by the Lower Appellate Court.

The appellant-plaintiff instituted a suit on the premise that he

was son of Rameshwar Dutt Sharma. Besides the plaintiff, Rameshwar Dutt Sharma had 3 sons, i.e., defendants No.1 to 3 and 2 daughters i.e., defendants No.4 and 5. During his life time, he made arrangements of his properties by executing a Will dated 25.08.2002 which was scribed by Shri Ramesh Kumar Budhiraja, Advocate. Both the attesting witnesses Sugant Singh and Rati Ram also signed the aforementioned Will as attesting witnesses. By virtue of Will, the defendants were left with no right and interest in the property in dispute but the defendants being strong headed persons were interfering into possession of the plaintiff which gave a cause of action to file the suit.

The suit was contested by defendant no.2 by filing written statement and taken preliminary objections qua maintainability, locus standi, cause of action and estoppel etc. On merit, it was averred that plaintiff was residing separately from his father since 1966 to 1977 and from 1977 to till date. Rameshwar Dutt Sharma died on 19.11.2002. Rameshwar Dutt Sharma had purchased 34 kanals 1 marla land in his name and also executed a registered Will dated 5.09.1997, wherein it was specifically mentioned that Om Parkash had no concern with the suit property and bequeathed his all movable and immovable property in the names of Daya Nand, Purshottam, Ramotar and his wife Ganga Devi.

The trial Court on the basis of aforementioned pleading framed the following issues:-

“1. Whether Sh. Rameshwar Dutt Sharma executed a valid and lawful Will dated 25.08.2002 in favour of plaintiff? OPP

2. *In case issue no.1 is proved in affirmative then whether plaintiff is owner in possession of suit property on the basis of Will dated 25.08.2002 executed by Rameshwar Dutt Sharma?
OPP*
3. *Whether the Will is false, forged and fabricated document? OPD*
4. *Whether plaintiff has no locus standi nor any cause of action to file present suit? OPD*
5. *Whether the suit not maintainable in its present form?
OPD*
6. *Whether the suit is estopped by his own act and conduct from filing the present suit? OPD*
7. *Whether the suit is bad for non-joinder and mis-joinder of necessary parties?OPD*
8. *Whether the suit has not properly valued for the purpose of Court fees and jurisdiction?OPD*
9. *Relief.”*

Both the parties led an evidence in support of their respective pleadings.

The trial Court on the basis of evidence held that plaintiff miserably failed to prove the Will dated 25.08.2002 having been executed in suspicious circumstances and by relying upon the Will dated 05.09.1997 dismissed the suit. The appeal preferred before the Lower Appellate Court also met with the same fate.

Mr. Naveen S. Bhardwaj, learned counsel appearing on behalf of the appellant-plaintiff submitted that judgments and decrees of the Courts below are not sustainable in the eyes of law as it suffer from illegality and perversity. The Will had been proved through the testimony of attesting witnesses namely Sungat and Rati Ram besides the testimony of Ramesh Kumar Budhiraja, Advocate, scribe of the Will. All the witnesses have deposed in terms of provisions of Section 68 of Indian Evidence Act. The Will of 1997 propounded by the defendants was previous one and therefore had to be ignored. Rameshwar Dutt Sharma had not given the entire movable and immovable property to the appellant and had also taken care of defendants. Both the attesting witnesses subjected to cross examination but their testimony had not been faulted despite extensive cross-examination. It was self acquired property of Rameshwar Dutt Sharma and he could deal with the property in any manner he wanted to. All these factors have not been looked into by the Courts below, thus, there is illegality and perversity in the findings under challenge.

Mr. Jagjeet Beniwal, learned counsel for the respondents submitted that concurrent findings of facts and law cannot be tinkered with until and unless there is gross illegality and perversity. The Will dated 25.08.2002 has been found to be suffering from suspicious circumstances as in the Will dated 05.09.1997, there was a categorical assertion by the testator that Om Parkash had not been living with him. No explanation has come forward that what was the reason for change of circumstances or love and affection deviated and prayed for dismissal of the appeal.

I have heard the learned counsel for the parties, appraised the judgments and decrees as well as record of both the Courts below and of the view that there is no force and merit in the submissions of Mr. Bhardwaj.

During the course of hearing, Mr. Bhardwaj read out the statements of attesting witnesses, namely Sungat and Rati Ram and submitted that they did not depose in terms of provisions of Section 63(c) of Indian Succession Act which envisages three situations:-Will has to be attested by two or more witnesses and each of them had seen the testator to either append his signatures or thumb impressions or mark or has seen the other person sign the Will in the presence and by the direction of the testator, or has received from the testator a personal acknowledgement of his signature or mark, or the signature of such other person; and third situation, each of the witnesses signed in the presence of the testator.

The second situation, i.e. attesting witnesses had put the signatures on the direction of the testator is conspicuously wanting, therefore, the Will cannot be looked into. This view of mine is derived from the ratio decidendi culled out by the Hon'ble Supreme Court in **Janki Narayan Bhoir Vs. Narayan Namdeo Kadam 2003(1) RCR (Civil) 409**.

Be that as it may, the previous Will dated 05.09.1997 had been proved on record, wherein, it has been categorically stated that plaintiff-Om Parkash had no relationship with deceased Rameshwar Dutt Sharma, therefore, the entire property was bequeathed in favour of the defendants. No such circumstances on behalf of the plaintiff has been brought on record

to establish that there was certain change in the Will on behalf of the testator before his death.

It is a matter of record that testator had died on 19.11.2002, whereas Will is of 25.08.2002 and another Will is of September 1997 which was registered one.

In view of what has been observed above, I do not find any illegality and perversity in the findings under challenge which are based upon the appreciation of oral and documentary evidence, much less no substantial question of law arises for adjudication of the present appeal.

No other argument has been raised.

Resultantly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

April 24, 2018
savita

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