

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-126-2015 (O&M)
Date of decision: 11.05.2018

Nand Ram and others

.....Appellants

versus

Durga Devi and another

.....Respondents

CORAM: Hon'ble Mr. Justice Kuldeep Singh

Present: Mr. Ashish Aggarwal, Senior Advocate with
Mr. Kulwant Singh and Mr. Govind Chauhan,
Advocates for the appellants
Mr. M. L. Sagar, Senior Advocate with
Mr. Sunny Sagar, Advocate for the respondents

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

Kuldeep Singh, J.

This is the defendants' Regular Second Appeal against the judgment dated 22.12.2014, passed by learned Additional District Judge, Hisar, affirming the judgment and decree dated 29.3.2011, passed by learned Additional Civil Judge (Senior Division), Hisar, vide which the suit of the plaintiff was decreed with costs to the effect that Will dated 19.4.1993 was held to be illegal, null and void and of no consequence and not binding upon the rights of the plaintiff and was set aside. Mutation No. 3963 and 682 were also set aside and plaintiff was held entitled to possession of 1/5th share out of the suit property from the defendants being the legal heirs of deceased Chiranjil Lal.

Plaintiff has filed the suit for possession by way of declaration that the unregistered Will dated 19.4.1993, allegedly executed by her father

Chiranji Lal in favour of defendant Nos.1 to 3, who are his brothers and deceased mother of defendant nos.3 to 8 i.e. wife of the pre-deceased brother, Parbhu Dayal, is false, fabricated, forged, illegal, null and void regarding the suit property fully detailed in the head note of the plaint. Plaintiff further claimed mesne profits of the said land to the extent of Rs.one lakh per month.

Facts of the case are that Chiranji Lal was owner of the land. He had three sons, namely, Nand Ram, Mohan Lal and Prabhu Dayal. He had two daughters, namely, Durga Devi –plaintiff and Savitri defendant No.9. Prabhu Dayal is dead and was succeeded by his wife Shanti and her children defendant Nos.3 to 8. Plaintiffs claimed that her brothers defendant nos.1 & 2 and mother of defendant nos.3 to 8, Smt.Shanti, in collusion with the Document Writer and the witnesses fabricated a Will dated 19.4.1993, allegedly executed by Chiranji Lal regarding the suit land. Will was scribed by Anil Kumar Document Writer of Hisar. On the basis of the said Will, mutation Nos.3963 and 682 were illegally, secretly, collusively got sanctioned from Tehsildar Hisar. It was stated that testator was not in sound disposing mind. Defendant nos.1 to 8 played active role in the execution of the Will. Chiranji Lal died on 24.1.1994. Plaintiff came to know about the alleged Will and sanctioning of mutations about two months before filing of the suit. She also claims mesne profits and filed suit on 14.11.2005, i.e. after about 6 years and 10 months after the death of her father Chiranji Lal.

Defendants being put to notice, Savitri defendant no.9 supported her brothers and stated that her father had executed Will dated 19.4.1993 in favour of her brothers and in favour of Shanti Devi wife of

deceased Parbhu Dayal and Rattan Lal son of Parbhu Dayal.

Defendant nos.1 and 2 in their written statement asserted the correctness of the Will. They stated that Chiranji Lal through Will dated 19.4.1993 bequeathed away 2/3rd in favour of defendant nos.1 and 2, another 1/3rd share in equal share in favour of Smt.Shanti widow of Parbhu Dayal and defendant no.3 Rattan Lal son of Parbhu Dayal. Later on, Smt.Shanti died and her share was inherited by defendant nos.3 to 8. It was stated that plaintiff was got married spending the huge amount. They are in possession of the property. Mutations were correctly sanctioned. Mere non-registration of the Will is no ground to set aside the same. It was also pleaded that the plaintiff was aware about the Will and did not challenge it. Therefore, suit is liable to be dismissed.

From the pleadings, following issues were framed:-

- 1. Whether the plaintiffs are entitled to the possession of the suit land by way of declaration that the Will dated 19.4.1993 allegedly executed by Chiranji Lal in favour of defendants no.1 to 3 and deceased mother of defendants no.3 to 8 is forged, fabricated and is liable to be set aside, as prayed for? OPP*
- 2. Whether the plaintiffs are entitled to the succession to the Estate as per natural succession and are entitled to get their names incorporated in the record, as prayed for? OPP*
- 3. Whether the suit of the plaintiff is within limitation? OPP*
- 4. Whether the plaintiff has not come to the Court with clean hands? OPD*
- 5. Whether the plaintiff has no locus-standi and cause of action*

to file present suit? OPD

6. Whether the deceased Chiranji Lal has executed legal and valid will in favour of defendants, as claimed? OPD.

7. Relief.

Before the trial Court, both the parties produced their hand writing expert. However, the trial Court relied upon the evidence of the witnesses to discard the Will and accordingly suit was decreed. In appeal the findings were reversed.

I have heard learned counsel for the parties and have also carefully gone through the record.

The short question before this Court is as to whether the deceased Chiranji Lal executed the valid Will on 19.4.1993 in favour of his sons defendant nos.1 and 2 to the extent of 2/3rd share and to the extent 1/3rd share in favour of Shanti wife of pre-deceased son Parbhu Dayal and Rattan Lal son of Parbhu Dayal in his sound disposing mind?

Admittedly, Will in question is unregistered document. The trial Court has discarded the Will on the basis of the following suspicious circumstances:-

1. Will is unregistered keeping in view that power of attorney of the same date was got registered by the testator.
2. Natural heirs i.e. daughters were discarded without mentioning any ground.
3. Testimony of scribe and witnesses is not dependable.
4. There is difference of spacing in the Will.

First and foremost ground to be considered is as to whether non-registration of Will in the present case is a suspicious circumstance?

The Courts below have taken the view that in the present case, not only Will (Ex.D1) dated 19.4.1993 was executed but another document i.e. General Power of Attorney (Ex.D2) was also executed on the same date. General Power of Attorney was registered but the Will was not registered. It appears that both the Courts below have probably taken a wrong impression that the General Power of Attorney (Ex.D2) was registered on the same date. A look at the unregistered Will (Ex.D1) and General Power of Attorney (Ex.D2) shows that these are scribed by the same Deed Writer i.e. Anil Kumar Sharma. These are attested by the same witnesses, namely, Radha Krishan and Narinder Saini. Both the documents were typed by the same Document Writer on 19.4.1993. However, General Power of Attorney, which requires compulsory registration, was registered not on the same date but on the next date i.e. 20.4.1993 at about 10.00-11.00 a.m.

Now, this Court is to find out the reasons as to why said General Power of Attorney which requires compulsory registration was not presented for registration on the date.

For this purpose, statements of the scribe as well as Narinder Saini, attesting witness are material. Narinder Saini, while appearing as DW2, has stated in cross-examination that on 19.4.1993, they started along with Chiranji Lal and Radha Krishan at 2.00-2.30 PM and came to the Court. Scribe was known to Chiranji Lal. Scribe noted the names of the witnesses and thereafter, he typed the Will. Name of the witnesses were written in his hand. The typing work was completed at 4-5 PM. Thereafter, Chiranji Lal got General Power of Attorney prepared. Typing of both the documents were completed at 5.00 p.m. It is a common knowledge that the office of the Registrar closes at 5.00 p.m. This shows as to why the said

document could not presented for registration on the same date.

Statement of Anil Kumar Sharma, scribe (DW3) also reveals that he had first typed the Will and then he typed General Power of Attorney. The Executant Chiranji Lal along with witnesses had come around 2-3 PM. It took one hour to type the Will and thereafter it took one and half hour to type the General Power of Attorney. He further stated that before typing the documents, he prepared the rough drafts of these documents. Thereafter, these were typed. He stated that he had not typed the names of the witnesses but had written it with his own hands which is his practice. Therefore, it is clear that scribing of the Will and General Power of Attorney was completed at around 5.00 pm when the office of the Sub Registrar was already closed. On the next day, since General Power of Attorney requires compulsory registration, therefore, the same was presented for registration and got registered. Therefore, both the Courts below erred in concluding that Will was not got intentionally registered for one or the other reason.

Further, it is to be noticed that the Will (Ex.D1) and General Power of Attorney (Ex.D2) are written by same scribe and attested by same witnesses. General Power of Attorney (Ex.D2) is not disputed by the parties nor signatures of the testator on the General Power of Attorney are disputed. Narinder Saini witness of the Will appeared to prove the Will. It was also proved by the scribe, who stated that he had read over the Will to the testator in the presence of two witnesses and that the testator has signed in the presence of the witnesses and the witnesses signed it in the presence of the testator. Testator had also signed the register of the scribe regarding scribing of the Will and General Power of Attorney. Therefore, Will

(Ex.D1) is duly proved in accordance with law. Mere non-registration of Will on account of the fact that it is not compulsory registrable, is itself no ground to discard the same.

Law in this regard is well settled. Reference may be made to authority in Sadasivam K. Doraisamy, 1996(1) Apex Court Journal 1 (S.C.).

Now, coming to the discarding of the natural heirs i.e. two daughters, namely, plaintiff Durga Devi and Savitri, it is to be noted that Savitri had supported the case of her brothers and had taken a stand that the Will was duly executed by his father. She has no objection to the Will. Cross-examination of Durga Devi shows that she was married in the year 1963 i.e. about 30 years before execution of the Will, which means that she is now well settled in her family. It is not her case that her matrimonial life is disturbed and she was dependent upon her parents. In this part of the country, there is a tendency in the agriculturalists to exclude the daughters from the Will so as to retain the agricultural land within the male members. The said tendency has been noticed in several cases. In Rur Singh (D) Th. LRS & others vs. Bachan Kaur, 2009(2) RCR (Civil) 511, Apex Court took a view that non-registration of Will and excluding the daughter from the succession is not a suspicious circumstance, particularly, when the daughter is comfortably married. Testator thought it proper to exclude her from the agricultural property and bequeathing the same in favour of his sons only.

In the present case also, same was done. It is to be noted that the deceased Chiranji Lal had three sons, namely, sons, namely, Nand Ram, Mohan Lal and Prabhu Dayal. Since Prabhu Dayal was dead, he gave share of Prabhu Dayal to his widow Shanti Devi and his son Rattan Lal. In this way, the share of Prabhu Dayal was given to his family. Therefore, mere

exclusion of the daughters from the Will is itself not a suspicious circumstance to discard the same.

In view of the foregoing discussion, it has to be held that testimony of the scribe and witnesses is dependable. Testator was in sound disposing mind as on the same day, he executed two documents and on the next day he came back to get General Power of Attorney registered with the office of Sub Registrar. General Power of Attorney is not challenged by the petitioner to have been illegally executed by the executant. Further, there is nothing on file to show that Chiranji Lal was not having sound disposing mind or was seriously ill on the date of execution of Will. There is no document in this regard on the file. Testimony of the scribe and two witnesses coupled with the attending circumstances goes to show that Chiranji Lal was of sound disposing mind and at the time of execution of Will, he was all well. He stayed with the scribe for nearly three hours on 19.4.1993 and on the next day morning, he again came back with the witnesses to get General Power of Attorney registered which was otherwise compulsory registrable. After the execution of Will on 19.4.1993 Chiranji Lal did not die immediately. He died about nine months later i.e. On 20.1.1994. Therefore, it also goes to show that Chiranji Lal was in sound disposing mind and the Will from its face is natural document. Due execution of the Will has been duly proved.

So far as plea of difference in line spacing is concerned, Will is duly typed. Examination of Will shows that it was typed in natural way. There is no difference in line spacing. It is scribed by a regular Deed Writer, who made the entry in this regard in his register (Ex.DW3/1). Entry in the Register was also signed by the testator.

It being so, it has to be held that the deceased Chiranji Lal, executed a valid Will dated 19.4.1993 and the same represent his true desire regarding disposing of property after his death. Therefore, I am of the view that the trial Court was correct in holding that a valid Will was executed by Chiranji Lal.

On the limitation, trial Court has taken a view that the suit is within limitation. Before this Court, it has been vehemently argued that the suit is time barred. The Will was executed in the year 1993. Chiranji Lal died on 24.1.1994 and soon thereafter, Mutation Nos.3963 and 682 were sanctioned in the year 1994. The suit was filed before trial Court on 14.11.2005 i.e. after about 11 years.

On behalf of the plaintiff- appellant, it has been argued that suit is time barred as the limitation will start from the date of mutation, since, the plaintiff was not in possession. Learned counsel has relied upon authority Kurdia vs. Rameshwar Dass and others, 2009(3) RCR (Civil) 672, wherein the suit was filed after 18 years of mutation of inheritance of common ancestors. Further reliance is placed on authority Shyam Lal & Kuldeep vs. Sanjeev Kumar and others, 2010(8) RCR (Civil) 2798, wherein a declaratory suit was filed in the year 1991, whereas mutation was sanctioned in the year 1988. It was held that it is not mentioned when the plaintiff derived the knowledge of the mutation and Will. Further reliance is placed on authority of this Court Dilbagh Singh vs. Umed Singh and others, 2013(3) PLR 190.

I am of the view that in this case, both the Courts below have taken the view that the suit is within limitation. Admittedly, plaintiff Durga Devi was married away from the village of her father about 30 years before

execution of Will. Therefore, it cannot be assumed that she will be knowing as to when her father had executed the Will and the mutations were sanctioned. At the time of sanctioning of mutations, presence of the plaintiff is not marked. She claims that whenever she came to know that mutations have been sanctioned, she filed the suit. Earlier, her father was in the possession of the land and after his death, her brothers were looking after the land. Since, Chiranji Lal had grown old, brothers of the plaintiff are likely to help their father in cultivation. Therefore, there was not a major change of cultivation of land by any 3rd party. Therefore, on coming to know about the Will and mutations, plaintiff filed the suit.

Learned counsel for plaintiff-respondent has relied upon the authority of Division Bench of this Court passed in Ibrahim alias Dharam Vir vs. Smt.Sharifan alias Shanti, 1979 PLJ 469, wherein it was held that mere entry of mutation does not give cause of action to the plaintiff. Cause of action arises when the threat is given to take possession. Similarly, this Court in Raj Pal and others vs. Smt.Chameli, 2016(4) Law Herald 3142, had taken a view that in a suit for declaration, limitation will not start not from the date of mutation but when the enjoyment of title or possession has been disturbed.

It being so, it has to be held that suit is within limitation.

It comes out that issue no.4 was not pressed before the trial Court and in view of findings on remaining issues, issue no.5 was decided against the defendants. In this case, findings of both the Courts below are perverse. There is misreading of evidence. Therefore, same can be interfered into in the Regular Second Appeal which is governed under Section 41 of the Punjab Courts Act, 1918.

As a result of the foregoing discussion, the present Regular Second Appeal is allowed. Judgment dated 22.12.2014 passed by the learned Additional District Judge, Hisar and judgment and decree dated 29.3.2011 passed by the learned Civil Judge (Senior Division), Hisar are hereby set aside and suit filed by the plaintiff Durga Devi stands dismissed with costs throughout. Decree sheet be prepared accordingly.

Since the main case has been allowed, therefore, the pending CM, if any, also stands disposed of.

11.05.2018
gk

(Kuldip Singh)
Judge

Whether speaking/ reasoned:	Yes
Whether Reportable:	No