

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

RSA No. 3188 of 2015(O&M)

Date of decision : 22.03.2018

Rita Rani

..... Appellant

versus

Sumit Kumar Jagga and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE AMIT RAWAL

Present: Ms. Savita Rana, Advocate for the appellant.

None for the respondents.

AMIT RAWAL, J. (Oral)

Appellant-plaintiff is in Regular Second Appeal against the judgment and decree dated 02.05.2015 passed by the Lower Appellate Court whereby the judgment and decree dated 13.12.2013 by the trial Court whereby suit for declaration, possession and permanent injunction which was decreed, had been set aside, by accepting the appeal of the defendant-respondents.

Appellant-plaintiff instituted a suit for declaration that the Will dated 12.07.2001 allegedly executed by Rajinder Pal in favour of the defendant and subsequent mutation and Jamabandi being null and void as she was the owner of the property described in the plaint to the extent of 1/3rd share and possession was also sought. It was alleged that she was married to Rajinder Pal according to Hindu rites and ceremonies. Plaintiff with the defendants constituted a Joint Hindu Family as the property was ancestral/Joint Hindu Family property. Due to the behaviour of her husband and his mother, the plaintiff was forced

to leave her matrimonial home many times but every time she was taken back upon apology of her husband Rajinder Pal who died on 21.8.2005. His last rites were performed by the plaintiff. Thereafter appellant was thrown out of the house. The plaintiff was shocked to know about the Will executed by Rajinder Pal regarding the entire property having been given to the defendants and she was given nothing. It was only then she filed the suit on 08.10.2010.

The aforementioned suit was contested by the defendants, who were none else but the sons of late Rajinder Pal, on the premise that Rajinder Pal, in order to avoid any dispute, had bequeathed the entire movable and immovable property by registered will No. 16/3 dated 12.07.2001 in the presence of witnesses. The nature of property being ancestral was emphatically denied. On the basis of the aforementioned pleadings, the trial Court framed the following issues:-

1. Whether Will dated 12.7.2001 and subsequent mutation No. 6039 are illegal, null and void and not binding upon the rights of plaintiff?OPP

1-A Whether plaintiff is entitled to decree for declaration with possession qua 1/3 share of the suit property per para no.3(i)(ii) of plaint?OPP

1-B Whether plaintiff is entitled to decree for permanent injunction thereby restraining the defendants from alienating the suit property in any manner?OPP

2. Whether suit of the plaintiff is not maintainable in its present form?OPD

3.. Whether plaintiff has no locus standi to file the present suit?OPD

4. Whether suit of the plaintiff is time barred?OPD

5. Whether plaintiff is estopped from filing the suit by her own act and conduct?OPD

6. Relief.

Appellant plaintiff in order to discharge the burden of proving the issues examined as many as three witnesses i.e. PW1- Halqa Patwari, PW2-Vijay Kumar and herself as PW3. Halqa Patwari brought on record the mutation, Fard jamabandi, death certificate of Rajinder Pal-Ex.P3, birth certificate of sons Ex.P4 and as well as death certificate of Rajinder Pal and also the will dated 12.7.2001. The defendant examined Sumit Kumar as DW1 who brought on record the Will Ex.D1, Nanu Ram as DW2, attesting witness of the will Ex.D1, Mahavir Gupta, Vasika Navis as DW3 who produced on record register Ex.D2, Ex.D3-an order dated 18.09.1998 in proceedings under Section 125 Cr.P.C. The trial Court, on the basis of the aforementioned finding that since the relationship between the defendant and Rajinder Pal was not denied for all intents and purposes the appellant was the wife of Rajinder Pal and, therefore, was entitled to get the 1/3rd share in the aforementioned property despite the fact that the previous marriage of Rita Rani with the other person was not dissolved by way of a decree of divorce and by discarding the Will to be surrounded by suspicious circumstances. The appeal preferred before the Lower Appellate Court has been accepted and the suit of the plaintiff has been dismissed.

Ms.Savita Rana, learned counsel appearing on behalf of the appellant submitted that the judgment and decree of the Lower Appellate Court is not sustainable in the eyes of law, for no reason had been given in the will excluding the name of the appellant from the will. Despite the fact that the appellant was legally wedded wife of Rajinder

Pal. There was a minor misunderstanding between Rajinder Pal and the appellant but the same was sorted out, for Rajinder Pal was consumer of excessive liquor. The appellant came to know about the exclusion of her name in the will only in the year 2010, therefore, the finding of the Lower Appellate Court that the suit was barred by limitation is neither here nor there and is liable to be set aside. Every wife is liable to be maintained and given a residential accommodation. The property at the hands of Rajinder Pal was ancestral as he had inherited the same from his forefathers which had been proved on record in the testimony of DW1 Halqa Patwari and urged this court for setting aside the judgment and decree of the Lower Appellate Court.

There is no representation on behalf of the respondents. It was noticed by this court on 11.4.2016 that the respondents had been avoiding service and liberty was given to move application. However, respondents were ordered to be served by substituted service for 02.09.2016 and extension for causing publication was granted and the respondents had been served through publication vide order dated 16.02.2017. On 23.02.2018 none appeared on behalf of the respondents despite substituted service.

I have heard learned counsel for the appellant and appraised the paper book and am of the view that there is no force and merit in the submissions of Ms.Savita Rana, learned counsel appearing for the appellant, for it has been proved on record that the marriage of Rita Rani with Rajinder Pal was third marriage and the earlier marriage had not been dissolved by way of a decree of divorce. There is a specific pleading in the plaint that the marriage with Rajinder Pal was performed

as per Hindu rites and ceremonies under the Hindu Marriage Act. Therefore, any marriage performed under the Hindu Marriage Act without annulment of the previous marriage would be a nullity in the eyes of law. Now the question arises whether in such circumstances the appellant-plaintiff would be entitled to 1/3rd share in the property of Rajinder Pal in case he died intestate, by ignoring the name of Rita Rani, no evidence has been placed on record except the mutation which shows that it was in the name of Rajinder Pal for proving the property to be ancestral there has to be lineage of third generation and the claimant to be the fourth one, which is not so in the present case. Coming to the point of Will, it has been held to be surrounded by suspicious circumstances I am of the view that the finding of the trial Court was totally erroneous and rightly been set aside by the Lower Appellate Court, for the will had been proved through the testimony of aforementioned witness. The will was a registered document. Since parties were not having cordial relationship a petition under Section 125 Cr.P.C. was filed in the year 2005 and a compensation of Rs.5000/- was awarded. All these factors weighed in the mind of the Lower Appellate Court to deprive the respondents from the rightful claim.

Ms.Rana has accepted the fact that she had come to know about the will in the year 2005 and Rajinder Pal had died on 21.08.2005 but did not come forward to challenge the will and rightly so the Appellate Court dismissed the suit being barred by limitation.

Appeal is dismissed.

(AMIT RAWAL)
JUDGE

22.03.2018
sunita

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No