

RSA No. 6140 of 2016 (O&M)
RSA No. 50 of 2017 (O&M)

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

RSA No. 6140 of 2016 (O&M)
Date of decision: 11.5.2018

Devi Dayal s/o Baru Ram

... Appellant

Versus

Tikka Singh and others

... Respondents

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RSA No. 50 of 2017 (O&M)

Devi Dayal s/o Baru Ram

... Appellant

Versus

Tikka Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Sanjay Tangri, Advocate
for the appellant.

Mr. S.S. Bains, Advocate
for caveator-respondents No.1 and 2.

ARUN PALLI, J. (Oral)

Vide this order and judgment, I shall decide RSA Nos. 6140 of 2016 and 50 of 2017, though arising out of two separate suits, but as the questions involved for determination in both these appeals are common, these are being decided by a common judgment. However, with the consent of learned counsel for the parties, facts are being culled from RSA No. 6140 of 2016.

The appellant-plaintiff sought a decree for declaration that respondents No.1 and 2 (defendant No.1 and 2), were not entitled to receive any compensation, as regards acquisition of the suit property, which

belonged to late Raja Ram, son of Dhanwant Singh, as also for injunction, restraining defendant No.3 from disbursing the compensation to defendant No.2. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

In brief, the case set out by the plaintiff was that grandfather of the plaintiff and defendants No.1 and 2, namely Dhanwant Singh, was the owner of land measuring 63 Kanal, situated in village Maloya, U.T. Chandigarh. Post death of Dhanwant Singh, his estate devolved upon his four sons, namely Arjan Singh, Nazar Singh, Raja Ram and Baru Ram. The plaintiff happened to be the son of late Baru Ram, whereas, defendants No.1 and 2 are sons of Arjan Singh. Raja Ram died issueless, and, therefore, his estate was to be inherited by his brothers in equal shares and after them by their respective heirs. But, as during the pendency of the suit, the Chandigarh Administration acquired the suit land, the compensation in lieu thereof was required to be deposited in the civil court, for the dispute as regards ownership/title qua the suit property was pending.

In the written statement filed on behalf of the defendants, it was pleaded, *inter alia*, that the plaintiff was estopped from filing the suit, for in the mutation proceedings before the Court of Assistant Collector, Chandigarh, his father, Baru Ram, appeared as a witness and supported the Will of deceased, Raja Ram, in favour of the defendants. The Deputy Commissioner, Chandigarh, upheld the said Will, and vide order dated 16.10.2002, the mutation as regards inheritance of late Raja Ram, was entered in favour of the defendants, while Baru Ram was still alive who never challenged this position.

On a consideration of the matter in issue and the evidence on

record, both the courts concurrently concluded, for Raja Ram died issue-less, the case set out by the plaintiff was that his estate would be inherited by his brothers in equal shares. Whereas, defendants No.1 and 2 claimed inheritance to the estate of deceased-Raja Ram, on the basis of a Will dated 15.4.1981, registered with the Sub Registrar at Sr. No. 51 on 26.5.1981. Thus, the plaintiff questioned the execution and validity of the Will, propounded by the defendants, and also set up a plea that since the suit property owned by Raja Ram, was co-parcenery in nature, all the four sons of Dhanwant Singh were joint owners, and, therefore, Raja Ram had no right to execute any Will. Thus, upon the death of Raja Ram, his property devolved upon the surviving coparceners. However, the evidence on record showed that post death of Dhanwant Singh, his estate devolved upon his four sons in equal shares, and all the three brothers of late Raja Ram, namely Arjan Singh, Nazar Singh, Baru Ram, had executed separate Wills qua their respective shares, inherited from Dhanwant Singh, in favour of their children. Further, plaintiff-Devi Dayal (PW1) conceded in his cross-examination that even his father-Baru Ram executed a Will qua his share in his favour. Likewise, even Nazar Singh had executed a Will in favour of his children. Thus, it was proved that property inherited by all the four sons of late Dhanwant Singh was being enjoyed by them separately. Therefore, the land owned by Raja Ram could not be termed as Joint Hindu Family Coparcenery Property. Rather, it was proved that Raja Ram was the exclusive owner in possession of the suit land. As regards the execution of the Will, dated 15.4.1981, it was observed that the defendants examined Rajesh Garg (DW3), the scribe as also the attesting witness, who proved due and valid execution of the Will. Minor discrepancies that appeared in his

statement were inconsequential as even otherwise, a witness is not expected to present a photographic version of the story. As regards other attesting witness of the Will, namely Pitamber Singh, it was proved on record that he had since passed away and his death certificate was proved on record as DW4/1. Sapitter Singh (DW4), younger brother of late Pritam Singh, appeared as a witness and identified the signatures of his late brother on the original Will. Therefore, the requirement of law to prove the Will by examining at least one of the attesting witnesses was duly substantiated. Moreover, the Will in question was a registered document and its registration was duly proved by Kuldeep Verma (DW1), Clerk from the office of Sub-Registrar, Chandigarh. The plea that the Will in question was surrounded by suspicious circumstance, as it was alleged to have been executed on 15.4.1981, whereas, the Will, as per the record of Sub-Registrar, was dated 26.5.1981, was also rejected. For the Will in question was scribed and executed on 15.4.1981 and was presented the same day before the Sub-Registrar, as evident from the endorsements on the back page of the Will. But, the Will was registered in the relevant register of the Sub-Registrar on 25.6.1981, in sync with the practice then in vogue. Further, none other than plaintiff-Devi Dayal himself conceded in his cross-examination that name of late Raja Ram was entered in the ration card of the father of defendants No.1 and 2. He also admitted the copy of ration card, wherein name of the deceased was so depicted. Copies of the electoral record (Ex.D8 and Ex.D9) further substantiated that name of Raja Ram was mentioned along with defendants Nos. 1 and 2. The plaintiff further conceded that name of the deceased was not mentioned in the ration card of any of his other brothers as their family member. Although, it was sought to be urged that the deceased

had fallen ill two and half months prior to his death, but the said plea remained unsubstantiated for lack of any cogent evidence. Accordingly, it was concluded that late Raja Ram was, indeed, residing with defendants No.1 and 2, and therefore, owing to his natural love and affection for them, being his nephews, he executed the Will in question. On being pointedly asked, learned counsel for the appellant could not show as to how, the findings recorded by both the courts were either contrary to the record or suffered from any material illegality.

Thus, no question of law, much less any substantial question of law, arises for consideration. The appeals being devoid of merit, are accordingly dismissed.

11.5.2018
AK Sharma

(ARUN PALLI)
JUDGE

Whether speaking / reasoned:
Whether Reportable:

YES
NO