

RSA-4894-2015 (O&M)
Date of Decision: 14.08.2018

Dhapal

.....Appellant

versus

Ishwari @ Ishari through her LRs and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL**Present:** Mr. Saurabh Dalal, Advocate
for the appellant.**DEEPAK SIBAL, J. (ORAL)**

The appellant filed a suit seeking therein a declaration to the effect that the Will dated 29.11.1971 allegedly executed by the appellant's father in favour of her mother and the mutation dated 19.12.1980 entered on the basis of the Will be declared null and void. Judgment and decree dated 11.04.1997 and mutation dated 07.06.1997 entered on the basis of the aforesaid judgment and decree were also challenged. She further sought to be declared as owner in joint possession of 1/4th share of the land detailed and described by her in the plaint (for short 'the suit property'). Permanent injunction to restrain defendants No.1 to 3 in the suit from interfering in the peaceful joint possession of the appellant over the suit property and from alienating the same in any manner was also sought.

The facts in brief which have been culled out from the record as also after hearing learned counsel for the appellant are that Mansa, who was the father of the appellant and respondent No.8 as also maternal grandfather of respondents No.4 to 7 died on 18.09.1980. He owned and possessed half share in agricultural land detailed and described in para 1 of the plaint. The

case set up by the appellant was that all heirs of her father including herself should succeed to his property as Mansa had died intestate. However, in September, 2001, she became aware of a Will dated 29.11.1971 executed by Mansa, in favour of his wife, on the basis of which she had transferred the property, through a collusive judgment and decree dated 11.04.1997, in favour of respondents No.2 and 3. She further became aware of mutations having been entered into on the basis of the aforesaid decree. Since according to the appellant, her father has never executed any Will, so she filed the instant suit for the aforesaid reliefs. On being put to notice, respondents No.1 to 3 appeared before the Trial Court and filed a joint written statement denying all the claims made by the appellant. The Will in question was stated to be a valid and genuine one. The judgment and decree which was impugned by the appellant was also defended stating it to be legal and having been passed by a competent Court after following due procedure. The consequent mutations were also defended.

The Trial Court after sifting the evidence led by the parties dismissed the appellant's suit. The appeal preferred by the appellant to challenge the dismissal of her suit met the same fate as her suit. It is in these circumstances that the appellant has knocked the doors of this Court through the present second appeal.

Learned counsel for the appellant has been heard.

The relationship between the parties is admitted. The ownership of the suit property in the hands of Mansa during his life time is also not in dispute. So far as the Will in question is concerned, the same is a registered document and that being so, presumption is attached to its

genuineness unless proved otherwise. The onus to prove that the Will in question was not a genuine document was on the appellant. However, no worthwhile evidence in that regard was led by the appellant. Even the Will in question was not produced by her. The Will is dated 29.11.1971 and was acted upon through consequent mutations in the years 1980 and 1986. Admittedly, at that time, the appellant did not even raise a finger and filed the instant suit only in the year 2009. On the basis of the Will in question even in revenue record, the suit property was reflected in the name of respondent No.1 for over 21 years. The appellant kept quiet without any worthwhile explanation for the delay on her part.

Both the Trial Court as also the Appellate Court have returned findings of facts sustaining the Will questioned by the appellant. No perversity in those findings is found warranting any interference by this Court. No question of law much less a substantial question of law is also found to arise in the appeal.

Dismissed.

(DEEPAK SIBAL)
JUDGE

14.08.2018

Neha

Whether Speaking/Reportable : Yes/No

Whether Reportable : Yes/No