

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

**RSA No.932 of 2015
Date of Decision.25.01.2018**

Baljit Khosla

.....Appellant

Vs

Sudhir Khosla and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. P.C. Chaudhary, Advocate
for the appellant.

Mr. Amit Jhanji, Advocate
for the respondents.

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AMIT RAWAL J.(ORAL)

The appellant-defendant is in appeal against the concurrent finding of fact whereby the suit instituted by the respondents-plaintiffs claiming relief of declaration that Tilak Raj father of the plaintiffs and defendant No.1 was the owner of property bearing No.50, situated at Rajinder Nagar, Near New Court, Jalandhar and after his death Smt. Shanta Khosla mother of the plaintiffs and defendant No.1 had no right and title in the suit property, much less, could not execute Will by bequeathing entire property in favour of defendant No.1 by challenging the title of the property in favour of Shanta Khosla and alternatively sought partition of the property of the plaintiffs and defendant No.1 to the extent of 1/4th each with a permanent injunction restraining the defendant No.1 from creating third party rights with a further prayer of declaration qua receiving the share from defendant No.1 from Punjab National Bank and Union Bank of India, Ladowali Road, Jalandhar out of the deposits left by Smt. Shanta Khosla, has been decreed by both the Courts below.

Before advertng to the arguments of Mr. P.C. Chaudhary, learned counsel appearing on behalf of the appellant-defendant No.1, it would be in the fitness of things to give preface of the matter. The aforementioned suit was filed by the plaintiff on the premise that the aforementioned property was purchased by Tilak Raj, who unfortunately died on 12.02.1973. In view of the affidavits submitted by the plaintiffs and defendant No.1, the aforementioned property was mutated/transferred in favour of Shanta Khosla by the Jalandhar Improvement Trust vide letter dated 19.12.1989. She during her life time had executed a Will dated 12.08.1992, Ex.P7, bequeathing entire share in favour of all the legal heirs. However, realizing that defendant No.1 on demise of Shanta Khosla, who unfortunately died on 13.02.2002, attempted to transfer the property in his name and in this backdrop of the matter, aforementioned suit was filed.

The suit was contested by defendant No.1 by taking various preliminary objections qua maintainability, locus standi, misjonder and non-joinder of necessary parties and barred by law of limitation etc. It was stated that Shanta Khosla bequeathed share in the aforementioned property vide Will dated 28.11.2000, Ex.D6. Shanta Khosla had become absolute owner in possession of the property and the entire sale consideration had already been paid to the Jalandhar Improvement Trust. Construction was also raised by Shanta Khosla through her husband. It was also stated that an application dated 23.12.2004 was submitted by defendant No.1 to defendant No.2 for transferring property in his name on the basis of the registered Will. The parties were at variance, therefore, the trial Court framed 14 issues including the issue of relief. Both the parties in respect of their claims and defences examined the witnesses. The trial Court on the basis of preponderance of

evidence found that Shanta Khosla had executed a Will Ex.P7 by bequeathing the entire property in equal shares and discarded the Will set up by the defendants vide which he claimed entire share of property finding it to be suffering from various suspicious circumstances. The appeal filed before the lower Appellate Court also met with the same fate.

Mr. P.C. Chaudhary, learned counsel appearing on behalf of the appellant-defendant in support of memorandum of appeal raised following submissions:-

- (i) The trial Court partly decreed the suit holding that Tilak Raj was the owner of the property, therefore, the plaintiffs and defendant No.1 would be owners of equal shares. In the appeal preferred by the defendant, appellants-plaintiffs also preferred cross-objection but the lower Appellate Court only decided the main appeal and not the cross objection.
- (ii) The lower Appellate Court discarded the Will only on the imaginary suspicious circumstances on the premise that the subsequent Will dated DW6/A did not specify as to in what manner other legal heirs i.e. the plaintiffs had been taken care of while transferring the property.
- (iii) The lower Appellate Court relied upon the letter Mark 'Y' written by Smt. Shanta Khosla, which could not be looked into for want of proof in accordance with law.
- (iv) Both the daughters were happily married and residing in their matrimonial home and the son of Shanta Khosla namely Sudhir Kumar i.e. respondent No.1-plaintiff, who

was left behind to look after his mother and take care of her, left her in the days of need. It is out of service rendered to the mother by the appellant that Will DW6/A was executed by Shanti Khosla without any fear, favour or threat but on account of her own volition.

- (v) Both the courts below lost sight of the fact that Shanta Khosla was 70 years of age when executed the second Will by specifically stating therein that she cancelled all testaments executed prior to the Will dated 28.11.2000 Ex.DW6/A, which was a registered Will and bore photograph of Shanta Khosla, thus, urges this Court for setting the judgments and decrees under challenge by formulating substantial questions of law as culled out in the memorandum of appeal.

Per contra, Mr. Amit Jhanji, learned counsel appearing on behalf of the respondents-plaintiffs submitted that the judgments and decrees rendered by both the Courts below are perfectly legal and justified. The validity of the Will Ex.DW6/A dated 28.11.2000 was examined threadbare/ minutely scrutinizing the testimony of DW-2, Balraj Bhaskar alleged witness, who was neighbour of Baljit Khosla and was in visiting terms. He admitted that he had been meeting Baljit Khosla during the time but in court did not disclose anything about execution of the previous Will. Mere registration of the Will would not render the previous Will a nullity or inoperative, as admittedly the property in dispute was owned by Tilak Raj, father of the plaintiffs and defendant and the Will was executed in the year 1992 distributing the suit property amongst legal heirs in equal shares. The

Will Ex.P7 contained a recital that till date none of her sons helped her financially. Document Ex.PX was admitted by the appellant in cross-examination which showed that the appellant wanted to grab the property in one way or the other. Letter written by Shanta Khosla to the Director, Local Bodies revealed that the property in dispute was rented out by her but the appellant was threatening to kill her. All these factors weighed in the mind of the Courts below in discarding the defence of the appellant-defendant, thus, urges this Court for upholding the findings under challenge as no substantial question of law arises for determination and also submitted that assuming for arguments sake that the cross-objection was not decided but the fact of the matter is that his clients are satisfied with the judgments and decrees rendered by the trial Court.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the aforementioned submissions of Mr. Chaudhary for the following reasons:-

- (i) Vide Will Ex.P7 executed by Shanta Khosla, she transferred the share in the property to all the legal heirs equally.
- (ii) Concededly, Will Ex.DW6/A set up by the appellant-defendant though registered, contains recital that plaintiffs had not taken care of, as some property had been transferred in their favour and therefore, the property in dispute was bequeathed in favour of defendant No.1 but it has not come on record as to whether Shanta Khosla owned any other property or not.

In other words, the Courts below on the preponderance of

evidence found that it was the only property which was owned by Tilak Raj and inherited by Shanta Khosla.

- (iii) The witness, Balraj Bhaskar, Advocate who was a neighbor of the appellant-defendant and despite known to him, was not apprised of the factum of the previous Will executed by Shanta Khosla, which shows that there was apparent collusion between the witness and the appellant-defendant.
- (iv) In the Will, Ex.P7, it was mentioned that none of the sons i.e. plaintiff No.1 and appellant-defendant No.1 had ever assisted Shanta Khosla financially in her life. Therefore, she executed the Will in favour of all the legal heirs i.e. the daughters and the sons.
- (v) DW-1 and DW-2 admitted that Shanta Khosla did not own any other property except the property in dispute.
- (vi) Letter Mark 'Y' though could not be looked into but the contents could be read for collateral purpose, which leads to irresistible conclusion that appellant-defendant No.1 did not have good relation with Shanta Khosla. There was no occasion for her to bequeath entire share of property in his favour.

All these circumstances examined in *extenso* and arguments noticed above, do not make out a case to form a different opinion than the one arrived at by the Courts below. As an upshot of my finding, I do not find any illegality and perversity in the judgments and decrees rendered by

the Courts below, much less, no substantial question of law arises for determination by this Court. Resultantly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

January 25, 2018
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No