

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 167 of 2018(O&M)

Date of Decision:11.1.2018

Smt. Pushpa Rani and another

---Appellants

vs.

Uttam Chand (since deceased) through LRs. and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. S.P.Arora, Advocate
for the appellants

Rekha Mittal, J.

CM No. 352-C of 2018

Prayer in this application is for bringing on record legal representatives of Uttam Chand (since deceased) respondent No. 1

In view of averments made in the application and arguments advanced by counsel for the applicants, application is allowed and legal representatives of Uttam Chand, respondent No. 1 are allowed to be brought on record for the purpose of present appeal subject to just exceptions.

Disposed of accordingly.

RSA No. 167 of 2018

The present appeal directs challenge against judgment and decree dated 8.11.2017 passed by the Additional District Judge, Hisar whereby judgment and decree dated 30.4.2014 passed by the Civil Judge

(Junior Division), Hisar in favour of the appellant/plaintiff has been set aside.

The present lis pertains to inheritance to the estate of Sh. Thakur Dass son of Mottan Dass. Appellant Pushpa is the daughter of Sh. Thakur Dass and claimed ownership in possession of 1/6th share in agricultural land measuring 128 kanals 12 marlas and House No. 1172/18 situated in Mohalla Rampura, Hisar on the basis of natural succession as the deceased left behind two sons, children and widow of pre-deceased son Atam Parkash, Smt. Kailash Wati @ Kalawati, Smt. Maya Devi @ Lajwanti and the appellant being daughters of Sh. Thakur Dass. She also challenged Will bearing No. 4 dated 8.4.1964 purported to be executed and registered by Thakur Dass in favour of his sons namely Uttam Chand, Ram Kishan and Atam Parkash (since deceased) to be the result of fraud and mutation No. 1073 dated 29.11.1964 sanctioned on the basis of Will to be illegal, null and void and liable to be set aside.

The contesting defendants filed the written statement and asserted their right to the suit property on the basis of Will dated 8.4.1964 stated to be executed by deceased Thakur Dass in favour of his three sons whereby he excluded his daughters and wife from inheritance. Daughters of Thakur Dass namely Smt. Pushpa (appellant herein), Kailashwati @ Kalawati and Maya Devi @ Lajwanti were married by their brothers as per wish expressed in the Will by Sh. Thakur Dass. The wife of Thakur Dass passed away before institution of the suit.

The learned trial court held that the suit property was ancestral in the hands of Sh. Thakur Dass as he inherited the same from his father

Mottan Dass, therefore, the appellant is entitled to 1/6th share in the land and house, subject matter of the suit. The issue with regard to the Will was answered against the respondents/defendants and issue of limitation was also answered against the respondents/defendants. Eventually, suit filed by the appellant was decreed holding her to be owner in possession of 1/6th share in the suit property. Will bearing No. 4 dated 8.4.1964 and mutation No. 1073 dated 29.11.1964 sanctioned on the basis of Will were ordered to be set aside. The revenue entries were ordered to be corrected qua share of the plaintiff in suit land and defendants/respondents No. 1 to 5 were ordered to be restrained from transferring, alienating, mortgaging and leasing out the suit property.

Feeling aggrieved against the judgment and decree passed by the trial court, the contesting respondents/defendants filed the appeal on the grounds annexed with the appeal. The Additional District Judge, Hisar set aside findings of the trial court on issue Nos. 1, 2 and 4 and resultantly, judgment and decree passed by the trial court was set aside and the suit filed by the appellant was ordered to be dismissed.

Counsel for the appellant has not assailed findings of the Court in Appeal that suit land is not proved to be joint Hindu family coparcenary property in the hands of Thakur Dass and the same was his self acquired property. Counsel has fairly informed that except the admission of Uttam Chand DW2 one of the defendants, there is no evidence on record to establish plea of the appellant that suit property was the joint Hindu family coparcenary property in the hands of Thakur Dass. As per the settled position in law, admission by a contesting party is not sufficient to hold a

particular property to be joint Hindu family coparcenary property. In this view of the matter, findings recorded by the Court in Appeal that suit property was the self acquired property of Sh. Thakur Dass are liable to be affirmed and ordered accordingly.

Much stress has been laid by counsel for the appellant that the contesting respondents failed to prove the Will in accordance with law. It is argued that admittedly both the attesting witnesses of the Will have already passed away. The respondents examined Kewal Krishan son of Sh. Munshi Ram DW4 to prove signatures of his father Munshi Ram on the Will Ex. DW4/A. It is argued that none of the witnesses examined by the respondents/defendants has proved signatures and thumb impressions of Sh. Thakur Dass on the Will in question. It is argued that Uttam Chand and Ram Kishan sons of Thakur Dass appeared in the witness box but their testimony is silent with regard to their having identified signatures and thumb impression purported to be affixed by Thakur Dass on the Will in question, therefore, the respondents failed to prove the Will in compliance with provisions of Section 69 of the Indian Evidence Act, 1872 (in short “the Act”). According to learned counsel, Court in Appeal did not advert to the requirements of Section 69 of the Act while answering issue No. 2 in favour of the respondents by reversing findings of the trial court on the said issue.

There is no dispute that Sh. Thakur Dass had three sons and three daughters and his wife Smt. Bimla Devi died prior to institution of suit. Sh. Thakur Dass purportedly left behind registered Will dated 8.4.1964 on the basis whereof, mutation was sanctioned in favour of his sons (beneficiaries under the Will) by AC IInd Grade, Hisar on 29.11.1964.

All the children of Thakur Dass got married long before the present litigation was started by one of his daughters who also got married as back as in the year 1980. The appellant is residing with her husband in her in-laws house at Hisar.

The appellant claimed 1/6th share in the suit property on the basis of natural succession by giving challenge to Will dated 8.4.1964 and mutation No. 1073 dated 29.11.1964 sanctioned on the basis of Will in question. The suit was instituted in March 2010. The respondents/defendants raised an objection with regard to the suit being barred by limitation. The trial court framed issue No. 4 with regard to limitation but committed a serious error by placing onus thereof on the respondents/defendants. As per the settled position in law, it is the obligation of the plaintiff to prove that the suit is within limitation. Equally settled is that the trial court has an obligation to examine if the suit brought by the plaintiff is within limitation even if the other party has failed to raise an issue in this regard. I would hasten to add that if a suit is barred by limitation, that constitutes a ground for rejection of plaint under Order 7 Rule 11 (d) of the Code of Civil Procedure.

In the case at hand, the appellant challenged the Will of 1964 by filing a suit in 2010. In para 5 of the plaint, she has raised averments as to how the suit is within limitation from the date of knowledge. A relevant extract therefrom reads as follows:-

“.....about four months back, when she went to patwari halqa for taking fard then she was told by the patwari halqa regarding the Will and the mutation has been sanctioned in

favour of defendants No. 1 and 2 as well as Atam Parkash on the basis of Will. Consequent upon that, the plaintiff made enquiries and obtained the certified copy of Will and copy of mutation as well as of jamabandi, so the suit being filed is well within time from the date of knowledge.”

As has been noticed hereinbefore but for the sake of repetition, the respondents/defendants raised the question of limitation on the basis whereof trial court framed issue regarding limitation. The appellant appeared in the witness box and tendered into evidence her duly sworn affidavit Ex. PW1/A. Perusal of the affidavit makes it evident that there is not even a whisper with regard to her having gained knowledge of the Will and mutation four months before filing of the suit. The appellant failed to lead any evidence to prove averments raised in para 5 qua limitation, extracted hereinbefore. However, in her cross examination, she has admitted that after death of her father Uttam Chand, Atam Parkash and Ram Kishan her brothers nurtured and brought her up. They had also got her married. Except her, none of her sisters had demanded their share in the land nor filed any suit. She was married in the year 1980. After her marriage, she had shared this issue with her husband. In the year 1980, it came to knowledge of her husband that land was in the name of her brothers whereas the Will was not in the name of her brothers. In the year 1964, the sale price of land was Rs. 180/- per killa and in the year 1980 it was Rs. 2000-3000/-.

As the appellant did not adduce any evidence to establish her plea that she came to know about the Will and mutation four months prior to

institution of the suit but on the contrary, her plea in this regard gets falsified and belied from the facts elicited in her cross examination, suit filed by the appellant is clearly barred by limitation. The trial court committed a serious error by answering issue No. 4 against the respondents/defendants and in favour of the appellant. The Appellate court rightly rectified the error committed by the trial court by answering issue No. 4 against the appellant. The analogy adopted by the trial court that owner can file a suit to claim title without any bar of limitation could be accepted only had there been no document/transaction casting cloud upon title of the appellant. In the instant case, the appellant has specifically challenged Will dated 8.4.1964 and mutation sanctioned in November 1964 on the basis of Will, therefore, suit filed by the appellant in the year 2010 is clearly barred by limitation and has rightly been so held by the court in appeal. Since suit filed by the appellant is barred by limitation, there is no reason to examine the issue of Will.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

11.1.2018
Paramjit

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No