

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

**R.S.A No.2324 of 2017(O&M)
Date of decision :20.08.2018**

Roshan Lal and another

..... Appellant

Versus

Parkash and others

..... Respondents

CORAM : HON'BLE MRS. JUSTICE LISA GILL

Present: Mr.Saurabh Dalal, Advocate
for the applicant-appellants.

LISA GILL,J

Present appeal has been filed against the judgement and decree dated 18.02.2014 passed by the learned Addl. Civil Judge (Sr. Division), Jhajjar, whereby the suit filed by the plaintiff-appellants has been dismissed as well as judgement and decree dated 14.01.2016, passed by the learned District Judge, Jhajjar, whereby their appeal has also been dismissed.

Brief facts necessary for the adjudication of the case are that suit for declaration and permanent injunction was filed by Shanti (deceased) through her legal representatives i.e. the present appellants with the averments that father of plaintiff-Shanti namely Neki son of Khubi solemnised two marriages during his lifetime. His first wife was Janki. Plaintiff-Shanti was born out of this wedlock. After the death of

Janki, his first wife, he solemnised second marriage with Mohrali. Three children, namely Dharma Chand, Dharampal and Chando were born out of this wedlock. Being the daughter of Neki, plaintiff-Shanti claimed entitlement to 1 /4 th share in the property of Neki measuring 114 Kanal 3 Marlas. It was further stated that defendants manipulated a forged and fraudulent will dated 16.02.1976 purportedly executed by Neki bequeathing all his property in favour of the defendant-Dharam Chand and Dharampal. It was stated that no such will was in-fact executed by Neki. The plaintiff averred that she came to know about the alleged will in the year 2006 , when she went to village Utlodha to receive her share of the property. The same is illegal, null and void besides mutation bearing no. 855 sanctioned on the basis of the said will be also set aside.

Defendants resisted the suit and denied the averments in the plaint. It was specifically pleaded that will dated 16.02.1976 was suffered by Neki. Mutation No. 855 on the basis of the will was sanctioned on 22.11.1979. Plaintiff was aware of the impugned will. The suit in question was pleaded to be barred by limitation. It was thus prayed that the same be dismissed.

From the pleadings of the parties, the following issues were framed:-

1. Whether the oral will dated 16.02.1976 and mutation no.855 in respect of the suit property is wrong, illegal, null and void and liable to be set-aside?OPP
2. If issue no.1 is proved, whether the plaintiff is entitled for permanent injunction restraining the defendants from alienating the suit property on the basis of alleged forged will in any manner whatsoever?OPP
3. Whether suit of the plaintiff is not maintainable in the present form?OPD

4. Whether suit of the plaintiff is barred by period of limitation?OPD
5. Whether plaintiff is stopped from filing the present suit by her own act and conduct?OPD
6. Whether suit of plaintiff is bad for non-joinder of necessary parties?OPD
7. Relief.

Both the parties led evidence in support of their respective claims.

Learned trial Court after considering the evidence on record held that the execution of will dated 16.02.1976 was duly established. Therefore, the suit filed by the plaintiff was dismissed.

Appeal preferred by the plaintiff-appellants was also dismissed by the learned District Judge, Jhajjar, vide impugned judgement and decree dated 14.01.2016.

Aggrieved therefrom, the present appeal has been filed.

Learned counsel for the appellants argues that the original will dated 16.02.1976 was not produced before the learned trial Court. Will in question could not have been proved by way of leading secondary evidence as has been permitted. Therefore, both the learned Courts below have erred in dismissing the suit filed by the appellant-plaintiffs.

I have heard learned counsel for the appellants and have gone through the file with his able assistance.

Property in question, doubtlessly belongs to Neki son of Khubi. Neki died on 08.08.1977. The present suit was filed in May 2006 i.e. after about 28 years of the death of Neki, father of plaintiff-Shanti. Respondents Dharam Chand and Dharampal successfully proved the execution of will Ex.DW4/B. There is no merit in the argument raised by

learned counsel for the appellants that secondary evidence of the will in question was not permissible. It is not disputed that the said will dated 16.02.1976 was lost from the record of the Revenue Authorities. Thus loss of original will was duly established and permission to prove the same by way of secondary evidence correctly afforded. Defendant-respondents examined the scribe of the will-Sita Ram (DW-3) and DW-6-Bablu Ram, one of the attesting witnesses of the will. Photocopy of the Register of the deed writer has been duly proved as Ex.D-1, which bears the thumb impression of Neki. It is further noticed that the plaintiff-Shanti as well as her sister-Chando had duly appeared before the Revenue Authorities and admitted the execution of the will dated 16.02.1976 in the mutation proceedings. This is apparent from mutation no. 855 dated 22.11.1979, Ex.D-2. The appellant-plaintiff in fact set up a case that the said will is fraudulent but no evidence was led by her to prove the same. It cannot be said that will dated 16.02.1976 is surrounded by any suspicious circumstances impinging on its genuineness. In this view of the matter, both the learned Courts below have rightly held that will dated 16.02.1976 executed by Neki in favour of Dharampal and Dharam Chand, has been duly proved on record.

No other argument has been raised.

Learned counsel for the appellant-plaintiffs is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal. Both the impugned judgements are well reasoned judgements rendered after proper appreciation and consideration of the evidence on record.

Keeping in view the facts and circumstances as discussed above, I do not find any infirmity, illegality or perversity in the impugned judgments and decree dated 18.02.2014 and 14.01.2016 passed by the learned Addl. Civil Judge (Sr. Division) Jhajjar and learned District Judge, Jhajjar, respectively, which warrant any interference by this Court.

There is a delay of two hundred and seventy two (272) days in re-filing of this appeal. Keeping in view the fact that the matter has been decided on merits, the question of delay in re-filing of this appeal has been rendered academic. Application is accordingly disposed of.

Present appeal is, consequently, dismissed with no order as to cost.

20.08.2018

s.khan

**(LISA GILL)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No