

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

RSA No.5721 of 2014

Date of Decision.22.05.2018

Seth Pal @Sheth Pal and others

.....Appellants

Vs

Ishro Devi and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. C.B. Goel, Advocate
for the appellants.

None for the respondents.

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AMIT RAWAL J.

The regular second appeal is directed at the instance of the plaintiffs and their legal representatives as few of them died during the pendency of the proceedings against the concurrent finding of fact whereby the suit claiming declaration that the plaintiffs and defendants No.2 to 6 are the owners in possession in equal shares of 1/9th share standing in the name of Rattan Singh, besides the share also standing in the name of plaintiffs and the defendants No.2 to 6 in respect of the suit land as detailed at Sr. No.(i) to (iv) of the plaint while laying challenge to the Will dated 19.12.2000 and agreement dated 28.07.1997 allegedly executed by Rattan Singh (deceased) and mutation No.967 of inheritance of Rattan Singh, being illegal and null & void, has been dismissed.

The suit aforementioned was filed on the premise that the plaintiffs and defendants are the real brothers and sisters of the deceased Rattan Singh, who died leaving behind them as legal heirs as he died issueless and being Class II heirs, they claimed inheritance

of Rattan Singh. Defendant No.1 by misrepresentation and concealment of fact that she was in possession of suit land obtained mutation in her favour. She filed a suit under Section 77(K) of the Punjab Tenancy Act for rendition of accounts and for passing a decree of recovery of due amount wherein defendant No.1 Ishro Devi, plaintiff (therein), specifically admitted that the present plaintiffs and defendant No.2 to 6 were in possession of the whole of the suit land.

Defendant No.1 contested the suit by raising preliminary objections qua maintainability. On merit, it was denied that plaintiffs and defendant No.2 to 6 were legal representatives of Rattan Singh whereas she being the widow was legal heir on the basis of the Will dated 19.12.2000. It was alleged that she had been living with Rattan Singh as his wife and this fact was recorded in the voter list of the village and ration card. Rattan Singh nominated her as nominee in his bank account. Earlier she was married with Pritam Singh, resident of Garh (Kotra), District Saharanpur (UP) but her relation with the previous husband became strained and she was deserted by her husband. Customary divorce was given by Pritam Singh to her as the parties belonged to the community in which customary law prevailed. Since no child was born out of first marriage, after seeking divorce, she performed second marriage with Rattan Singh. When Rattan Singh fell ill, he was taken to Gaba Nursing Home, Yamuna Nagar where he executed an authority-cum-nomination in her favour on 1.12.2000 in the presence of Digvijay and Shashi Shekhar and also Dr. B.S. Gaba. Rattan Singh could not have bequeathed the property in favour of the plaintiffs and defendant No.2 to 6 as his relation with

them was not cordial. The Will aforementioned was registered and resultantly, the revenue authorities sanctioned the mutation in favour of defendant No.1 on 17.8.2001.

Since the parties were at variance, the trial Court framed following issues:-

- “1. Whether the plaintiff and defendants No.2 to 6 are owners in possession of suit property as prayed, if so its effect? OPP
2. Whether the suit is not maintainable? OPP
3. Whether the plaintiff has no locus standi to file the present suit?OPD
4. Whether the defendant is legally wedded wife of Rattan Singh, if so its effect? OPD
5. If issue No.4 is proved in affirmation then whether Rattan Singh had left the registered and valid Will in favour of defendant No.1? OPD
6. Relief.”

The appellants-plaintiffs examined as many as nine witnesses and tendered into evidence documents Ex.P3 to P42 whereas the defendants examined 12 witnesses and tendered the document Ex.D1 to D17.

The Courts below on the basis of documentary evidence dismissed the suit and the appeal laid before the lower Appellate Court also met with the same fate.

Mr. C.B. Goel, learned counsel appearing on behalf of the appellants submitted that both the Courts below committed

illegality and perversity in returning the finding under Issue No.1, 4 and 5 against the appellants-plaintiffs, for, defendant No.1 has failed to prove that she was divorced with the earlier husband Pritam Singh, therefore, subsequent marriage with Rattan Singh was nullity and could not stake claim in the estate of Rattan Singh alleging herself to be wife. The Courts below have also failed to take into consideration that defendant No.1 pleaded in the written statement that she was legally wedded wife of Pritam Singh. The Will was surrounded by suspicious circumstances as 15 days after the execution of the Will, Rattan Singh died. He was struggling for life in the hospital. The finding of the Courts below with regard to Will is totally perverse and not legally sustainable. There was no compliance of provisions of Section 63(c) of the Indian Succession Act and Section 68 of the Indian Evidence Act. Dhani Ram did not support the Will and another witness Kartara Ram did not appear. The nomination forms Ex.D5, ration card Ex.D6, copy of pass book of bank account Ex.D7 had not been proved in accordance with law.

The findings of the Courts below with regard to marriage of Rattan Singh with Ishro Devi is neither here nor there, for, she was kept as servant for cooking and assumed the role of wife by propounding the Will. Customary divorce as alleged has not been proved on record, much less, any evidence under Section 50 of the Indian Evidence Act had been brought on record to establish that there was a marriage between Ishro Devi and Rattan Singh. Mere registration of the Will would not dispense with its proof. The defendant No.1, propounder of the Will, has failed to discharge the

onus.

Mr. Goel laid strong emphasis on Ex.P23, a decision dated 7.6.2007 rendered in Civil Appeal No.52 of 2004 titled as “Ishro Devi Vs. Ramji Lal and others” wherein the lower Appellate Court affirmed the finding of the trial Court on the premise that it was not proved the fact that she was married to Rattan Singh. A regular second appeal bearing No.633 of 2011 was preferred against the same decided on 15.03.2011 which showed that plaintiff had only claimed permanent injunction for restraining the defendants from cutting and removing the trees from the suit property which was dismissed on the basis of evidence brought on record. The operative part of the order rendered in regular second appeal was read over, which reads as under:-

“After hearing the learned counsel for the appellant I am of the opinion that the instant appeal deserves dismissal.

The case of the plaintiff was that she was the sole legal heir of deceased Rattan Singh, being his widow. However, the plaintiff admitted in her cross-examination that she was married to Pritam Singh. She had performed court marriage with Rattan Singh. The plaintiff, however, failed to produce on record any document to establish her plea that she had performed court marriage with Rattan Singh. Moreover, the plaintiff failed to establish that she had got a decree of divorce from Pritam Singh, with whom she was

married. Plaintiff also failed to prove on record the alleged Will executed by Rattan Singh in her favour. In these circumstances, the Courts below rightly held that the plaintiff had failed to prove her case. As per the copy of Jamabandi on record, plaintiff was not reflected to be in possession of the suit property.

No substantial question of law arises in this appeal.

Dismissed.”

All the information given to the Departments who issued those documents was by Ishro Devi and therefore, it was unilateral act and pertained to period when Rattan Singh was alive, thus, urges this Court for setting aside the findings under challenge.

The respondents have already been served and respondent No.1 was represented by Mr. S.S. Sikand, Advocate but nobody appeared on the date of hearing, therefore, this Court proceeded to decide the appeal.

I have heard learned counsel for the appellants, appraised the paper book, records of the Courts below and of the view that there is no force and merit in the submissions of Mr. Goel, for, Ex.D5, D6, D7 and D8 are the nomination forms, ration card, copy of passbook of bank, voter card which established that Ishro Devi's name was reflected as nominee in the aforementioned documents. The voter card also showed name of the husband as Rattan Singh. Ration card bore the photograph of Rattan Singh and Ishro Devi. So is the position with regard to passbook. No doubt, Dhani Ram DW10 did

not state about execution of the Will, for, during the course of hearing, Mr. Goel had read out the cross-examination wherein in reply to two specific questions he stated that before he could read, the Will had already been written and Rattan Singh had not signed in his presence as Rattan Singh was ill for the last 20 days. The aforementioned witness was recalled for further cross-examination and on the request of the defendant, he was declared hostile vide order dated 9.1.2010.

The Will is registered and it has been proved through the testimony of Registration Clerk. Even if the attesting witness of the Will had turned hostile but a person from the office of Registrar has proved the Will, the same is valid. This view of mine is derived from the ratio decidendi culled out by Hon'ble Supreme Court in **Ved Mitra Verma Vs. Dharam Deo Verma (2014) 15 SCC 578**. For facilitation, paragraph 7, 8 and 11 of the same reads as under:-

“7 The exclusion of the other children of the Testator and the execution of the Will for the sole benefit of one of the sons i.e. the Respondent, by itself, is not a suspicious circumstance. The property being self-acquired, it is the will of the Testator that has to prevail. Therefore, the question as to whether the Will is a genuine and acceptable document will depend on a consideration of the other circumstances surrounding its execution.

8 While there is an obvious error in the Will in the name of the daughter of the Testator, there are two significant aspects of the matter which cannot be overlooked.

Firstly, the Will was written to the dictation of the Testator, and secondly, in the description of the name of the daughter, there is a reference to her husband's name which is correct i.e. Narayan Singh. The aforesaid two circumstances can reasonably explain the error in the name of the daughter as appearing in the Will and we are persuaded to hold that the said error is not material so as to invalidate the Will.

11 The attesting witnesses having died, the Sub-Registrar, who had registered the Will was examined as PW-3. He was examined on commission and in response to the questions posed to him, particularly, question No. 2, he had set out the circumstances in which the attesting witnesses as well as the Testator had signed on the document. This part of the evidence has been elaborately considered by the High Court to record its satisfaction that the execution of the Will has been proved on the basis of the evidence of the Sub-Registrar i.e. PW-3. Having considered the aforesaid aspect of the matter, we are of the view that the satisfaction recorded by the High Court does not suffer from any apparent infirmity or fundamental error which would require correction in the exercise of our jurisdiction Under Article 136 of the Constitution of India. All the alleged suspicious circumstances surrounding the execution of the Will being capable of being understood in the manner

indicated above and the requirement of Section 69 of the Indian Evidence Act, 1872 having been satisfied by the evidence of PW-3, we find that in the present case, the findings and conclusions recorded by the High Court would not call for any interference. Consequently and for the reasons aforesaid, we dismiss the appeal leaving the parties to bear their own costs.

Both the Courts below did not agree with the contention of the plaintiffs, for, PW4 Om Parkash in the cross-examination testified that Bimla Devi first wife of Rattan Singh died before 8-9 years and he solemnized marriage with Ishro Devi after 8-9 months after death of his first wife. His testimony corroborated the case of the plaintiff. Dhani Ram had not denied his signature on the Will but simply stated that he put his signature on the typed paper in good faith. Dr. B.S. Gabha, DW4 proved the document Ex.DW4/1 which bore his signatures and stated that Rattan Singh was admitted in his hospital. He was in sound mind to make any statement. Despite his extensive cross-examination, nothing contrary surfaced. Handwriting expert had also proved the signature of Rattan Lal on the Will. DW12, Pardeep Godara, SDM also proved the Will. The evidence of Dhani Ram, who changed side with the plaintiffs, if ignored, the defendants proved the execution of the Will in view of the findings rendered in **Ved Mitra Verma's case** (supra).

All these factors weighed in the mind of the Courts below while rendering the findings under challenge. The argument of Mr. Goel has not been able to cut ice to bring the case within the

realm of illegality and perversity to form a different opinion than the one already arrived at, much less, no substantial question of law arises for consideration by this Court. No ground for interference is made out. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

May 22, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No