

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**1. RSA No. 3032 of 2017
Date of Decision: 17.01.2018**

Smt. Ratti Bai and othersAppellants

Versus

Dharam Singh and othersRespondents

2. RSA No. 4542 of 2017

Dharam SinghAppellants

Versus

Hans Raj and othersRespondents

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Neeraj Sheoran, Advocate
for the appellants in RSA-3032-2017.

Mr. J.S. Hooda, Advocate
for the appellant in RSA-4542-2017.

Mr. Atul Yadav, Advocate
for the caveator.

SURINDER GUPTA, J.

The above captioned regular second appeals will be disposed of by this common judgment as these arise out of the same judgment dated 04.12.2014 passed by Additional Civil Judge (Sr. Division), Gurgaon.

2. Plaintiff-Dharam Singh (appellant in RSA-4542-2017) filed suit claiming the relief of declaration as follows:-

“A decree for declaration to the effect that the impugned Will bearing vasika no. 132 dated 22.12.2003 and its mutation bearing no. 5035 dated 13.01.2004 are illegal, null and void and not binding on the right and title of the plaintiff. Even,

subsequent sale deed bearing vasika no. 442 dated 20.09.2004, vasika no. 2059 dated 17.12.2004. vasika no. 2191 dated 31.12.2004, vaiksa no. 92 dated 15.04.2005 and vasika no. 1100 dated 23.08.2004 and consequent mutations are also illegal, null and void and not binding on the right and title of the plaintiff and are liable to be set aside, fully detailed and described in para no. 2 of the plaint.

3. Chiranji Lal, father of plaintiff and defendant no. 1-Hans Raj and defendants no. 2 to 7 was owner of the suit property, purchased by him vide sale deed bearing *vasika* no. 5296 dated 17.11.1987. Plaintiff alleged that aforesaid land was purchased from common funds of the family as well as out of joint earnings of forefathers, as such, was joint Hindu family ancestral coparcenary property in the hands of Chiranji Lal. Defendant no. 1-Hans Raj illegally, unlawfully and by way of undue influence got executed Will dated 22.12.2003, registered in the office of Sub-Registrar, Farrukh Nagar, Gurgaon in his favour from Chiranji Lal and on the basis of this Will he got mutation no. 5035 dated 13.01.2004 entered and sanctioned. On the basis of that mutation, defendant no. 1 executed sale deed as mentioned in the relief clause (discussed above), which plaintiff has challenged in this suit.

4. Defendants no.1 and 3 to 8 contested claim of plaintiff while defendant no. 2-Smt. Ratti Bai (appellant in RSA-3032-2017) admitted claim of plaintiff and prayed for decreeing his suit.

5. Learned Additional Civil Judge (Sr. Division), Gurgaon while pondering over the issue of ancestral nature of property observed in para 21 of the judgment as follows:-

“21. As per article 223 of Hindu Law, to prove ancestral

*nature of the suit land, it is to be proved on the file that suit land was inherited through three descendants. However, in the case in hand, plaintiff only produced revenue record to the effected that the suit property was inherited by Chiranji Lal from Bhola S/o Hira. However, this proof only cannot establish ancestral nature of the suit land. Furthermore, admittedly, the suit land was purchased by late Sh. Chiranji Lal vide sale deed Ex. P-17 as well as admittedly he purchased suit property in the year 1960. The aforesaid facts are even otherwise evident from cross-examination of PW-1 Dharam Singh. When, the property had been purchased by late Sh. Chiranji Lal, from no stretch of imagination, it can be presumed to be ancestral property. In this regard, even reliance can be placed on authorities titled **Gulab Singh vs. Maman Chand, 2009 (2) RCR (C) 428** and **Matu Ram vs. Kartar Singh, 2004 (3) LJR 818**. The learned counsel for the plaintiff at this juncture argued that suit property was purchased in the year 1965 from joint funds and the exchange deed Ex. PW-1/B of the same corroborate said fact. He also argued that ancestral and non-ancestral property was mixed in such a manner that entire property has become ancestral in nature. However, even aforesaid contentions has no substance in it. In case title **Tarawati vs. Shanti, 2007 (1) RCR (Civil) 808**, **Darshan vs. Chhano, 2004 (3) RCR (Civil) 803**, Ho'ble Punjab & Haryana High Court categorically held that even if ancestral and non-ancestral property are mixed up in such a manner that the ancestral and non-ancestral property cannot be separated, then the entire land is to be treated as non-ancestral. Thus, even if for the sake of argument, the aforesaid contentions of learned counsel for the plaintiff are believed to be gospel truth then even natu re of the*

suit land is non-ancestral. Since, suit property detailed in para no. 2 of the plaint is proved to be non-ancestral in nature, late Sh. Chiranji Lal had every right and title to execute Will pertaining to the same.”

6. The Will executed by Chiranji Lal was held as duly proved and suit of plaintiff was ordered to be dismissed.

7. Defendants have also filed counter-claim seeking possession of the house constructed on the land bearing Rect. no. 107, *killa* no. 24, Village Farrukh Nagar, District Gurgaon, alleging that status of possession of plaintiff over the house was that of licensee and his licence stood revoked after death of Chiranji Lal. He sought decree of mandatory injunction for direction to plaintiff to hand over possession of suit land and his counter-claim was also decreed.

8. Not satisfied, plaintiff-Dharam Singh and defendant no. 2-Smt. Ratti Bai filed separate appeals, which were dismissed by Additional District Judge, Gurgaon vide common judgment dated 12.12.2016. Lower Appellate Court upheld findings of learned Additional Civil Judge (Sr. Division), Gurgaon that registered Will executed by Chiranji Lal is duly proved and nature of suit land is not proved to be joint Hindu family ancestral coparcenary property in the hands of Chiranji Lal.

9. I have heard learned counsel for parties and have perused the paper-book with their assistance.

10. First question raised by learned counsel for the appellant is that the registered Will dated 22.12.2003 allegedly executed by Chiranji Lal is not duly proved as both the marginal witnesses have died and defendant no.

1-Hans Raj has not been able to prove execution of the Will as per

provisions of Section 69 of the Evidence Act, 1872. Admittedly, both the marginal witnesses of the Will have since died and in such situation the Will is to be proved as per provisions of Section 69 of the Evidence Act, which reads as follows:-

69. Proof where no attesting witness found —If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.

11. In order to comply with provisions of Section 69, defendant no. 1 examined scribe of the Will who has stated that he had scribed the Will on asking of Chiranji Lal, which was read over and explained to him, who had put his thumb impression in his presence and witnesses, namely, Sheo Narain, *numberdar* had also put his thumb impression while other witness, namely, Ram Avtar as marginal witness had put his signatures. He had entered the Will in his register at serial no. 291 and handed over the same to Chiranji Lal. To further substantiate his plea, Giani Ram, Sub Registrar was examined as DW-6, who has stated that Chiranji Lal appeared for registration of the Will before him. He enquired about name and address of testator and about execution of the Will. The testator affixed his thumb impression on the Will and marginal witness, namely, Sheo Narain, who was personally known to him, also affixed his thumb impression on the Will in his presence while other witness, namely, Ram Avtar signed on the Will in his presence.

12. Section 69 of the Evidence Act requires that in the event of an attesting witness being not found, it must be proved that the attestation of

one of the attesting witness was in his handwriting and that signatures of the person executing the document is in the handwriting of that person. In this case both the aspects have been duly proved. Sub-Registrar, who registered the Will discharged his duty under the statute and has stated that testator had put his thumb impression on the Will in his presence while one witness, namely, Sheo Narain, who was personally known to him, had also put his thumb impression and other witness, namely, Ram Avtar had put his signatures. Firstly, the Will is registered and secondly, Sub-Registrar Giani Ram is an uninterested witness and his statement is reliable and fulfills ingredients of Section 69 of the Evidence Act to prove Will executed by Chiranji Lal.

13. Here learned counsel for the appellants have argued that it is a settled proposition of law that Sub-Registrar cannot be treated as an attesting witness, as such, his testimony is not material to prove execution of the Will.

14. I agree with learned counsel for appellants to the extent that Sub-Registrar, who had registered the Will, cannot be treated as an attesting witness but in this case, DW-6 Giani Ram has not appeared in his capacity as marginal witness but he has appeared to comply with provisions of Section 69 of the Evidence Act to prove that the Will bears thumb impression of testator and thumb impression/signatures of marginal witnesses. In view of this I find no infirmity in the concurrent findings recorded by the Courts below that execution of the Will is duly proved and upheld the same.

15. Learned counsel for appellants have argued that suit property

was joint Hindu family coparcenary property in the hands of Chiranji Lal as he had purchased the same from joint Hindu family funds.

16. Admittedly, the suit property was purchased by Chiranji Lal vide sale deed no. 5296 dated 17.11.1987. Onus was heavily on plaintiff to prove that Chiranji Lal possessed any joint Hindu family coparcenary property. The Court below has taken note of the fact that vide mutation (Ex. P-6), Monohari, Basanti, Dharmo and Sarti, daughters of Bhola, transferred their 4/7th share in favour of their brothers, namely, Mam Chand, Chiranji Lal and Ragbir by way of a Court decree. No mutation was placed on file regarding inheritance of any property by Chiranji Lal from his father Bhola, who died prior to coming into force of Hindu Succession Act. The suit land was purchased by Chiranji Lal alongwith his brothers vide sale deed (Ex. P-17). Chiranji Lal had purchased another property in the year 1960 and had transferred 16 *acres* of his land to his daughter vide judgment and decree dated 23.11.1995 (Ex. DW-1/4 and DW-1/5). He had also purchased 4 *acres* of land in name of Dharam Singh and his brother Subhash (defendant no. 2), husband of Smt. Ratti Bai separately vide sale deed Ex. DW-1/1. Plaintiff has never challenged the alienation of his property by Chiranji Lal in favour of his daughters. The concept of joint Hindu family ancestral coparcenary property is very clear and plaintiff was required to prove on record that suit property was inherited by Chiranji Lal from his ancestors or there was any property in the hands of Chiraji Lal which he had inherited from his ancestors. Even if it be believed that some property was inherited by Chiranji Lal from his ancestors and some property he had inherited from other sources or was purchased by him and all these properties got

amalgamated and cannot be separated, in that case entire property is to be taken as self acquired property and not as joint Hindu family coparcenary property. In these circumstances, it appears that claim of plaintiff challenging the Will executed by his father is actuated by his lust for property and has no substance. Both the Courts below have rightly observed that plaintiff has failed to prove the plea taken by him, firstly, that suit property was ancestral property and secondly, that the Will executed by Chiranji Lal was illegal and result of undue influence.

17. On giving a careful thought to submissions of learned counsel for appellants and on perusal of paper-book, I find no legal or factual infirmity in judgments passed by Courts below calling for any interference in these appeals, which have no merit and are dismissed.

January 17, 2018

jk

**(SURINDER GUPTA)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No