

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

RSA No.6418 of 2017(O&M)

Date of Decision.24.04.2018

Ishwar Devi and another

.....Appellants

Vs

Mohal Lal and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Rakesh Gupta, Advocate
for the appellants.

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AMIT RAWAL J.(ORAL)

The appellants-plaintiffs are in regular second appeal against the concurrent finding of fact whereby the suit claiming inheritance of Chanan Dass, father-in-law and grandfather of the appellants-plaintiffs in respect of the suit property owned by him by challenging the mutation dated 13.06.1980 and the registered Will dated 10.01.1979 to be null and void, has been dismissed by the trial Court vide judgment and decree dated 20.12.2013 and upheld by the lower Appellate Court vide judgment and decree dated 28.02.2017.

Ishwar Devi wife of Dewan Chand and daughter-in-law of Chanan Dass and Kailash Rani, daughter of Dewan Chand and granddaughter of Chanan Dass instituted the suit challenging the aforementioned documents on the premise that Chanan Dass died intestate in the year 1980 and therefore, the property was inherited by plaintiffs as Chanan Dass left behind only son i.e. Dewan Chand. Since Dewan Chand died intestate, therefore, suit property was inherited by the plaintiffs, Gian Chand, Smt.

Dharam Devi and Devi Bai got 1/4th share each in the property. In the

month of October 2008, defendant No.7, Gian Chand tried to dispossess the plaintiffs from their house situated in Mohalla Rampura, necessitating the plaintiffs to file suit for injunction wherein defendant No.7 filed the written statement dated 17.12.2008 and disclosed the registered Will dated 10.01.1979 for the first time. The plaintiffs enquired the matter from the revenue authorities and they came to know that defendant No.7 cleverly got mutation No.1454 entered and sanctioned in faovur of his sons i.e. present defendants No.1 and 2 and Yashpal, predecessor-in-interest of defendant No.3 to 6. In fact, Chanan Dass never executed any Will and the impugned Will was forged and fabricated document. The aforementioned Will was surrounded by suspicious circumstances as Chanan Dass had lost control over his senses. Chanan Dass was in habit of putting signatures on the documents during his life time but the impugned Will bore his thumb impression. The plaintiffs were in joint possession of the suit property and therefore, defendants took the advantage of wrong entries. Defendant No.1 and 2 and Yashpal transferred land comprising of khasra No.88//16 and 17/1 to defendant No.10 to 13 and land comprised in khasra No.88//23/1 to defendant No.14 to 16. Those sale deeds were also not stated to be binding on the plaintiffs.

The aforementioned suit was contested by defendant No.2 to 5 and 7 by filing written statement and took the preliminary objections of non-maintainability, locus standi, lack of cause of action. It was alleged that the Will dated 10.01.1979 was disclosed to the plaintiffs which was in their knowledge. In the suit preferred by Yashpal, predecessor-in-interest of defendant No.3 to 6, as Yashpal was grandson of Chanan Dass and son of Gian Chand against the plaintiffs wherein Kailash Rani filed the written

statement on 18.08.1994 mentioning about the aforementioned registered Will, therefore, the suit was liable to be dismissed on that ground only. Chanan Dass was allotted land in Village Hasanga, Tehsil Fatehabad, who purchased a plot in village Basti Bhiwan. After the death of Diwan Chand, his agricultural land was inherited by the plaintiffs. Gian Chand and his family members took care of the plaintiffs after the death of Diwan Chand. Defendant No.7 solemnized the marriage of Kailash Rani with Pawan Kumar and gave handsome dowry in lieu of affection. Pawan Kumar, husband of Kailash Rani was a greedy person. He misused the land owned by his wife and mother in law. Ishwar Devi transferred her 1/4th share in land measuring 283 kanals 12 marlas in favour of Kailash Rani as per the judgment and decree dated 20.07.1994. Kailash Rani transferred that land in faovur of Mohan Lal as per judgment and decree dated 25.03.1995. She transferred the remaining land in favour of Vijay Kumar son of Hans Raj as per judgment and decree dated 25.03.1995. Both the decrees suffered by Kailash Rani was with free will and the consent of her husband. Vijay Kumar executed sale deed dated 13.5.1996 in favour of Yashpal Singh (since deceased). All these entries were withheld from the notice of the Court, much less, in the suit.

In the Will dated 10.01.1979, Chanan Dass clearly mentioned that he had taken care of the share of the daughters in the shape of dowry. The Will was scribed by Daya Nand, Deed Writer at the instance of Chanan Dass, which was attested by two witnesses namely Madan Gopal and Tulsi Dass, thus, prayed for dismissal of the suit.

Defendant No.10 to 13 and 14 to 16 filed the written statement reiterating the stand taken in the written statement filed by other defendants.

Since the parties were at variance, the trial Court framed as many as 11 issues including the issue of relief. The plaintiff No.2 examined herself as PW1 and brought on record Ex.P1 to P9 whereas defendants as many as 11 witnesses and brought on record documents Ex.D1 to D29, Mark DW11/B, Ex.DW1/A to DW1/C and DW5/B to DW5/D.

In rebuttal, the plaintiffs examined Vijay Singh Clerk as PW2, Sukhvinder Singh, Ahlmad as PW3 and Rajender Kumar HRC as PW4 (wrongly mentioned as PW3) and tendered documents Ex.P10 copy of affidavit of Gian Chand, Ex.P11 copy of statement of Gian Chand and Ex.P12 copy of mortgage deed 10.03.69.

The trial Court on the basis of the aforementioned documents and pleadings dismissed the suit on the ground that the Will dated 10.01.1979 as propounded by the defendants had been proved through the testimony of attesting witness, Tulsi Dass. Since it was registered document, presumption of truth carried, which was not rebutted by the plaintiffs. There was no substance in the argument of plaintiffs that Tulsi Dass was employed in the same office in which Gian Chand son of Chanan Dass was employed, thus, held that element of suspicious circumstance was conspicuously absent. The appeal preferred before the lower Appellate Court was also met with the same fate.

Mr. Rakesh Gupta, learned counsel appearing on behalf of the appellants submitted that the suit ought not to have been dismissed, for, the Will dated 10.01.1979 allegedly executed by Chanan Dass specifically mentioned that Diwan Chand had been given the share. Even during the pendency of appeal, an application was moved before the lower Appellate Court calling upon the respondents to apprise regarding some record to

establish that the property was transferred in the name of Diwan Chand on the basis of the Will and in this regard, he drew attention of this Court to the zimni orders dated 21.01.2017 and 30.01.2017 to submit that the Will was an outcome of suspicious circumstance for no property was actually given to Diwan Chand. Diwan Chand died leaving behind the plaintiffs i.e. widow and daughters, who have not been given any property. The suit could not have been dismissed for lack of cause of action or for limitation as defendants had not taken the plea of limitation nor any issue was framed. The knowledge of the Will dated 10.01.1979 was acquired for the first time in the year 2008 when the suit for injunction was filed by the plaintiffs against Gian Chand, who attempted them to dispossess. Umpteen number of documentary evidence was brought on record, which had not been rebutted, therefore, there is illegality and perversity. Gian Chand was working in the Tehsil. Even witnesses, who had attested the Will were also working in the same office. It was a clear case of suspicious circumstances. The suit of the plaintiffs was within limitation and therefore, could not have been non-suited on the ground of limitation. Respondent-defendants No.3 to 4 cannot be said to be bona fide purchasers as they never made any reasonable or proper enquiry. The alleged Will was not witnessed by Sarpanch or Numberdar of the Village. No person from the village witnessed the said Will. All these factors, if read in cumulative, the suit would have been decreed while setting aside the documents under challenge, thus, urges this Court for allowing the appeal.

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

(i) The defendants had categorically taken the plea with regard to transfer of land by Ishwar Devi but the same has not been denied in the replication, in essence, it is not the case where Diwan Chand had not inherited the property. The suit could have been brought within the provisions of Article 58 of the Limitation Act as Article 59 of the Limitation Act provides a limitation of three years for challenging any registered document or instrument/decreed.

(ii) The Will dated 10.01.1979 is the registered document and the same was disclosed in the suit filed by Yashpal, predecessors-in-interest of defendant No.3 to 5. Written statement filed on behalf of Kamlesh Rani brought on record wherein she mentioned about the registered Will. No explanation has come forward in not challenging the Will within the period of three years as the suit had been filed on 13.08.2009 whereas the judgment and decree was passed on 20.07.1994. The cause of action alleged to have accrued in the year 2009 was a story coined for the purpose of bringing the suit within the limitation.

(iii) The plaintiffs have categorically pleaded that they inherited the property after the death of Chanan Dass in the year 1980 and were in joint possession of the land but no evidence has been led to show that they had been in joint possession. No sane person would sit idle

whereas on the contrary, the mutation on the demise of Chanan Dass was effected as per Will in the year 1980.

The plaintiff have not been able to produce any evidence in support of the averments made in the suit and rightly so, the suit cannot be said to be within the period of limitation, for limitation can always be made by taking cognizance of the provisions of Section 3 of the Limitation Act.

All these factors weighed in the mind of both the Courts below. The argument of Mr. Gupta is not able to bring the case within the realm of illegality and perversity, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

April 24, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No