

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

RSA-98-2017 (O & M)
Date of Decision:09.10.2018

Bindo @ Bimla

...Appellant

Versus

Bachan Gir and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vijay Lath, Advocate
for the appellant.

ANIL KSHETARPAL, J.

Plaintiff-appellant is in the regular second appeal against the judgment passed by the learned First Appellate Court.

Dispute in the present case is with respect to the estate of Maya Devi. Plaintiff claims that she is owner of 22 bighas and 2 biswas of land and sale deeds executed by defendant No.1 in favour of defendants No.4 to 8 with respect to land measuring 11 bighas as also dated 10.01.2007 in favour of defendant No.2 with regard to land measuring 11 bighas and 12 biswas are null and void and not binding on the rights of the plaintiff.

Plaintiff-Bindo @ Bimla has pleaded that on the death of Sh. Devi Gir, property was inherited by Kishan Gir, who was married to Maya Devi and the plaintiff is their only daughter. Plaintiff claims that defendant No.1 has forged a registered Will dated 19.08.1980 of Kishan Gir, which is result of fraud. She further claims that the mutation of land on the basis of alleged registered Will dated 19.08.1980 is also wrong. She further claims

that it was a plaintiff, who used to serve late Sh. Kishan Gir and last rites

were performed by the plaintiff.

Plaintiff has further pleaded that defendant No.3 namely Roshni Devi had also filed a suit for declaration in collusion with defendant No.1 and the aforesaid suit has been withdrawn on 19.12.2006.

Both the sale deeds have been challenged by the plaintiff. Defendant No.2 contested the suit and pleaded that the entire case set up by the plaintiff is based upon incorrect facts. It is claimed that the plaintiff is claiming the property to be ancestral and coparcenary property but she cannot be and was not a member of coparcenary. It is further pleaded that defendant No.1 had succeeded to the property from late Smt. Maya Devi through registered Will dated 19.08.1980 and there is no registered Will dated 19.08.1980 executed by Kishan Gir. Mutation of inheritance has rightly been sanctioned.

On appreciation of evidence, learned trial Court partly decreed the suit while returning a finding that the plaintiff being natural heir is entitled to 11 bighas of land. Plaintiff filed first appeal. Learned First Appellate Court after re-appreciating the evidence not only dismissed the appeal but also held that the learned trial Court has erred in declaring the plaintiff to be entitled to 11 bighas of land. The Court found that the suit filed by the plaintiff is false and, therefore, order to be dismissed.

This Court has heard learned counsel for the appellant at length and with his able assistance gone through the judgments passed by both the Courts below.

Plaintiff was 70 years old when she appeared in evidence. It has come in evidence that after the death of Kishan Gir, late Smt. Maya Devi re-married with Sh. Mastu Gir and gave birth to Bachan Gir (defendant No.1)

and Roshni Devi (defendant No.3). When the plaintiff appeared in the witness-box, she stated that her mother was owner of the suit property and she died 15/20 years ago. She admitted that mutation of the suit property was sanctioned on the basis of the Will in favour of Bachan Gir (son from second marriage) after the death of her mother. However, later on she resiled and stated that she does not know about the said fact. She admitted that defendant No.1 handed over possession of the property sold to defendant No.2. She admitted that she is resident of village Bassian, which is at a distance of 25/30 kilometers from village Ajijpur. She stated that she and Roshni Devi were born from one mother but Roshni Devi was her step sister. She admitted that Roshni Devi had also filed a similar suit in which she was party but Smt. Roshni Devi withdrew the aforesaid suit. Date of death of Kishan Gir has not come in evidence, however, exclusive ownership of late Smt. Maya Devi is not in dispute as Bindo-plaintiff has admitted that her mother was owner of the property at the time of her death. Bachan Gir is step brother of plaintiff-Bindo.

Learned First Appellate Court after noticing that Maya Devi had died before August, 1994 as mutation of her inheritance was sanctioned on 25.08.1994 whereas present suit was filed by the plaintiff on 15.02.2007 i.e. after a period of approximately 13 years. Still further, the Court has noticed that plaintiff-Bindo while appearing in evidence has admitted that she was impleaded as the defendant in the suit filed by Smt. Roshni Devi. Therefore, she knew about the Will executed by Maya Devi in favour of Bachan Gir. She also knew that Bachan Gir has sold some part of the property vide sale deed dated 25.05.1995. The aforesaid suit remained pending in the Court for more than 6 years as Roshni Devi after entering

into a compromise gave a statement in the Court on 19.12.2006. Thus, it has been concluded that once Bindo was in knowledge of the Will in favour of Bachan Gir and he sold the property vide sale deed dated 25.05.1995, she never claimed any right. It is apparent that the present suit was filed by the plaintiff, once Bachan Gir executed the sale deed with regard to remaining land on 10.01.2007. Present suit was filed on 17.02.2007. Hence, the learned First Appellate Court has found that the suit filed by the plaintiff is not only based upon wrong facts but also barred by time.

Learned counsel for the appellant submitted that when the mutation of late Smt. Maya Devi was sanctioned on the basis of registered Will dated 19.08.1980, the plaintiff has not been disclosed to be daughter of Maya Devi. Hence, he submits that the mutation dated 24.08.1994 is result of fraud. This Court has considered the submission. However, find no substance therein.

No doubt, in the mutation, the plaintiff has not been shown to be the daughter of late Smt. Maya Devi but at the same time the mutation has been sanctioned on the basis of registered Will executed by late Smt. Maya Devi dated 19.08.1980. Further if one looks at the plaint filed by Roshni Devi Ex.P-4 on the file, the plaintiff was impleaded as defendant. In the aforesaid suit the address of the plaintiff is same as in the present suit. Plaintiff has led no evidence to prove that she did not come to know about the pendency of the first suit.

Still further, it is admitted by her while appearing in evidence that she is married and aged about 70 years living in village Bassian. The plaintiff did not disclose the correct address before the Court while filing the suit. She did not disclose that Bachan Gir is her step brother and Roshni

Devi is her step sister. She further did not disclose that late Smt. Maya Devi had re-married with Mastu Gir. She further did not chose to disclose that property was owned by late Smt. Maya Devi. She filed the suit by totally concealing the facts and projecting before the Court wrong facts. Plaintiff has woken up after a period of 13 years once Bachan Gir has sold the remaining property on 10.01.2007. Only with a view to harm the interest of purchasers for valuable consideration, the present suit was filed.

In view of the aforesaid, there is no ground to interfere.

Regular second appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the above said judgment.

09.10.2018
sheetal

(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No