

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

**RSA No.221 of 1985 (O&M)
Date of Decision.12.04.2019**

Late Col (retd) Shradha Nand Khanna (deceased through LRs) and
another ...Appellants

Vs

Vishwa Nand Khanna (deceased) through LRs and others
..Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sunil Chadha, Senior Advocate with
Mr. Sharad Mehra, Advocate
for appellants No.1 and 2.

Mr. M.S. Sachdev, Advocate
for appellant No.3.

Mr. Manish Jain, Advocate and
Mr. Mayur Kanwar, Advocate
for respondent No.1(iii).

Mr. B.R. Rana, Senior Advocate with
Mr. Deepak Kumar Gollen, Advocate
for respondent No.3(i).

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AMIT RAWAL J. (ORAL)

C.M. No.9472-C of 2016

Application is allowed.

Copy of plaint/civil suit No.410 of 1995 is taken on
record.

C.M. No.1774-C of 2016

Application is allowed.

Copy of Will dated 24.03.1971 is taken on record.

Main case

The present regular second appeal is at the instance of
defendants No.1, 2 and 15 against the judgment and decree of the

lower Appellate Court whereby suit of the respondents No.1 to 3 (now being represented through LRs) (hereinafter called plaintiffs) for declaration of joint possession of land measuring 150 kanals 11 marlas out of land measuring 401 kanals 9 marlas by way of natural succession qua share of Ram Piari dismissed by the trial court, has been decreed by the lower Appellate Court.

By giving pedigree table of their father Parma Nand Khanna and mother Ram Piari, who died in 1934 and 1978 respectively, it was alleged that Ram Piari died intestate and left behind four sons and three daughters, who were liable to succeed on the ground of natural succession being an ancestral property and the Will, if any, propounded by the defendants was forged and fabricated. It was asserted that defendant No.15 was an adopted son.

Defendants No.1, 2 and 15, appellants herein, contested the suit by raising preliminary objections and propounded Will vide which Ram Piari had bequeathed 50% of the property to defendant No.15 and 25% each to defendant No.1 and plaintiff No.1.

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

“i) Whether the suit is not maintainable in the present form? OPD

ii) Whether the plaint requires amendment on the ground of preliminary objection No.2, 4 and 7 of the written statement? OPD

iii) Whether the plaintiffs are estopped to file the present suit by their acts and conduct on the grounds of

preliminary objection No.6 of W/S? OPD

iv) Whether the land in suit is ancestral property of the parties? OPP

v) Whether the land in dispute has been allotted in lieu of previous land during consolidation? OPP

vi) Whether Smt. Ram Piari executed a valid Will as alleged in the written statement? OPD

vii) Whether Sh. Rajendra Nand Khanna defendant was adopted by Smt. Ram Piari? If so its effect. OPD

viii) If any Will is proved, that is the result of fraud, mis-representation and undue influence and pressure? OPD

ix) If issue No.7 is proved, whether the adoption is the result of fraud, mis-representation undue influence and is not binding against the plaintiff? OPP

x) Whether the plaint is properly valued for the purposes of court fees and jurisdiction? OPP

xi) Whether the suit is within limitation? OPP

xii) Relief.”

Instead of the original Will, certified copy Mark E and photostat copy Mark A of the same was brought on record. The Will stated to be attested by two witnesses Pritma Nand Khanna and Shambu Nath Kapoor. The trial Court, after noticing the aforementioned facts upheld the Will and dismissed the suit but the lower Appellate Court reversed the finding on the ground that defendants did not bring on record the original Will and decreed the suit leaving the legal heirs to succeed by way of natural succession.

Vide Misc. Application No.9472-C of 2016 on behalf of the appellants-defendants, prayer has been made to bring the copy of the suit filed by plaintiff No.1-respondent i.e. Lt. Col. Vishwanand Khanna at Dehradun claiming/asserting the right in certain properties, situated there, by relying upon the registered Will dated 24.03.1971. Another misc. application bearing No.1774-C of 2016 has been moved for placed on record the original Will.

Mr. Sunil Chadha, learned Senior Counsel assisted by Mr. Sharad Mehra, learned counsel appearing for the appellants No.1 and 2 and Mr. M.S. Sachdev, learned counsel appearing for appellant No.3, defendant No.15, submitted that plaintiffs' claim of succession of estate of Ram Piari by way of natural succession has been belied as per the assertion made in the plaint at Dehradun and even in the absence of any Will or its proof, though it has been placed on record, the onus to prove the same stands discharged. In other words, admitted things are not required to be proved. Since the beneficiaries are only three siblings, other son namely Pritma Nand Khanna i.e. defendant No.3 also did not assert any right in the property. The Will was also registered. Mr. Chadha also pointed out that even daughters were also represented by Vishwa Nand Khanna, plaintiff No.1 being the attorney holder.

Mr. Manish Jain and Mr. Mayur Kanwar, learned counsel appearing for respondent No.1(iii) i.e. legal representative of plaintiff No.1 submitted that he cannot deny assertions in the plaint at Dehradun as signatory was none else but plaintiff No.1. Since the original Will had not come on record, the judgment and decree cannot

be set aside as the defendants failed to discharge onus as per the provisions of Section 101 of the Indian Evidence Act.

I have heard learned counsel for the parties, appraised the paper book and of the view that following Substantial Questions of Law arise for determination by this Court:-

“(i) Whether judgment and decree of the lower Appellate Court in view of the fact that plaintiff No.1-respondent claimed devolution as natural succession is belied by relying upon Will dated 24.03.1971 in a plaint filed at Dehradun can sustain?

(ii) Whether plaintiffs have dispensed with onus of proving the Will?

The entire edifice of the present plaint was that Ram Piari during her life time did not execute any Will, much less, its registration. A person may lie but the documents do not. It is a case where the aforementioned saying directly applies. It would be in the fitness of things to reproduce the memo of parties of Civil Suit No.410 of 1995 filed at Dehradun and the averments in paragraphs 2, 3, 4 and 5 and the same reads as under:-

“In the Court of Civil Judge, Upper Division, Dehradun.

Suit No.410 of 1995

*Lt. Col. Vishwanath Khanna son of Raizada Parmanand
Khanna resident of 86 Turner Road, Clement Town,
Lane No.7, Dehra Dun through his wife and attorney
Mrs. Cynthia Doreen Khanna. ...Plaintiff*

versus

1. *Mr. Rajendra Nand Khanna G/son of Raizada Parmanand Khanna, resident of Kailash Hills Apartment, New Delhi.*

2. *Lt. Col. Shardanand Khanna son of Mr. Raizada Parmanand Khanna resident of 5 E.C. Road, Dehra Dun.*

....Defendants

Sir,

Plaintiff respectfully begs to submit as under:-

1. *xxxxxxx*
2. *That Mrs. Rampyari had executed a Will dated 24.3.1971/25.3.1971 which had been registered in the office of Sub-Registrar, Dehra Dun at Book No.3, Volume No.69 at page 271 to 272 at document number 3, Volume No.69 at page 271 to 272 at document number 30 registered on 26.3.1971. The Will is dated 24.3.1971 and has been presented for registration on 25.3.1971.*
3. *That virtue of the aforesaid Will Mrs. Rampyari had bequeathed share in the property mentioned in schedule below in the following proportion etc:-*

- | | | |
|--------------------------|----------|------------------|
| <i>a) Plaintiff</i> | <i>-</i> | <i>25% share</i> |
| <i>b) Defendant No.1</i> | <i>-</i> | <i>50% share</i> |
| <i>c) Defendant No.2</i> | <i>-</i> | <i>25% share</i> |

4. *That Mrs. Rampyari has breathed her last in the year 1978. The name of deceased continued in the Municipal record and names of plaintiff and defendants are not mutated.*
5. *That aforesaid Will of Mrs. Rampyari was implemented by parties. There is no other Will of the deceased Mrs. Rampyari.”*

It is an act of volte face on behalf of plaintiff No.1 being attorney holder of plaintiffs No.2 and 3 in the present suit by asserting a totally different stand than the one in the suit filed at Dehradun. The law of evidence is not complicated. It is very simple as onus to prove the Will is always on the propounder. The propounder in the instant case is none else but the appellants-defendants. There would have been force in the argument of Mr. Jain of supporting the judgment of the lower Appellate Court in the absence of original Will but that objection can also not be pressed into service in view of admission of execution of Will. In the Code of Civil Procedure, situation after admission and denial arises to lead evidence after framing of the issues on which parties are at “variance”. Similarly order 12 Rule 6 CPC recognize judgment on admission. Had there been any admission in the suit, the situation would have arisen in view of request of the appellants to this Court to look into the original Will by calling upon the report of the trial Court but that exercise would also not be necessary. The long and short of the controversy which is put to rest is the admission of the Will in the suit instituted at Dehradun.

In view of such circumstances, judgment and decree rendered by the lower Appellate Court is not sustainable and accordingly set aside. The judgment and decree of the trial Court is restored. The Substantial Questions of Law are answered in favour of the appellants and against the respondents. Resultantly, the second appeal is allowed.

(AMIT RAWAL)
JUDGE

April 12, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No