

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1500 of 1988 (O&M) &
XOBS No.4-C of 2015
Date of Decision: March 29, 2019

Om Parkash & another

...Appellants

Versus

Om Parkash

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Om Parkash Sharma, Advocate,
for the appellants.

Mr. Hemant Bassi, Advocate,
for the respondent.

AMIT RAWAL, J. (Oral)

This order of mine shall dispose of Regular Second Appeal No.1500 of 1988 at the instance of appellant-plaintiffs and Cross-objections No.4-C of 2015 by the respondent-defendant arising out of a decision rendered in Civil Suit No.121 of 1980 titled as “Om Parkash and Subhash sons of Smt.Bhagwati Versus Om Parkash son of Mange Ram).

Plaintiffs stated that they are sons of Bhagwati daughter of Pehlad Rai @ Pehlad Singh. Bhagwati had married Bhim Singh and out of this wedlock, two sons, i.e., the plaintiffs were born. Pehlad Rai had purchased the property vide sale deed dated 06.09.1966 registered on 15.06.1966, i.e., half share in his name and another half in the name of one Om Parkash. After the death of Pehlad Rai, Bhagwati was the sole owner of the property as he, during his life time, executed a Will dated 21.07.1969

(Ex.P3) specifying that he had only one daughter. Defendant Om Parkash was, in fact, the son of Mange Ram.

Defendant was earlier proceeded ex-parte and after having granted permission to contest, opposed the suit alleging himself to be son of Pehlad Rai and half share of the house was purchased by him along with his father and denied status of Bhagwati as daughter of Pehlad Rai. He had gone out of station for work and when came back, came to know that one Natha son of Ram Sukh and Basheshar son of Ranjit had forcibly occupied the house by breaking upon the lock. In this view of the matter, was constrained to file the suit for possession, which, after contest was decreed vide judgment and decree dated 15.06.1979. The appeal was also dismissed. In such circumstances, defendant was held to be owner of the house in question and it was only in the proceedings for taking possession, defendant came to know about ex-parte judgment and decree and filed the application and contested the suit.

On receipt of the replication, the trial Court framed the following issues:-

- “1) Whether defendant Om Parkash is not the son of Pehlad son of Shanker as alleged? OPP*
- 2) Whether Smt.Bhagwati was the daughter of Sh.Pehlad and the plaintiffs are her minor sons? OPP*
- 3) Whether the plaintiffs are in possession of the suit land? OPP*
- 4) If issue No.3 is not proved, whether the suit is maintainable in the present form? OPP*
- 5) Whether the suit is not within limitation? OPD*
- 6) Whether the suit is false and frivolous and the defendant is entitled to special costs. If so how much? OPD*
- 7) Relief.”*

Plaintiffs, in support of the evidence, examined six witnesses and also brought on record documents Ex.P1 to Ex.P7. During the pendency of the suit, amendment was caused in the plaint to plead that Bhagwati had inherited half share of the house also on the basis of the Will executed by Pehlad Rai and on the basis of the amendment, additional issue No.6A was framed. The same reads thus:-

“6A Whether Pehlad had executed a valid will in respect of his property in favour of Smt.Bhagwati as alleged? OPD”

Thereafter, the plaintiffs examined PW-7 Matu Singh, PW-8 Baldev Dutt and PW-9 Permanand and brought on record documents Ex.P8 to Ex.P23. On the other hand, the defendant examined seven witnesses and brought on record documents Ex.D1 to Ex.D7. In rebuttal, plaintiffs also examined one Sagar Mal as PW-10. The sale deed in question has been brought on record as Ex.D1, which reflected that Pehlad Rai along with Om Parkash, his son, had purchased the house in question jointly.

On the basis of the aforementioned evidence, the trial Court decreed the suit holding the plaintiffs to be owners to the extent of half share and suit qua other half share was dismissed. Two appeals have been filed, but the same have been dismissed. In this manner, the present appeal and cross-objections were filed.

Mr. Om Parkash Sharma, learned counsel appearing on behalf of the appellant-plaintiffs submitted that defendant Om Parkash was none else but son of Mange Ram and this fact was attempted to be proved through the testimony of PW-2 Daya Nand, School Teacher, who brought on record his school admission form dated 04.10.1956 (Ex.P2) to establish that Om Parkash was the son of Mange Ram. In fact, defendant failed to lead any evidence in terms of provisions of Section 50 of the Indian

Evidence Act (for short, the Act) to establish the parentage of Om Parkash. On the other hand, plaintiff appeared himself and also examined another witness who testified that Pehlad Rai had only one daughter Bhagwati and none else. Nanar PW-5, the first cousin of Bhagwati, stated that Pehlad Rai had only one daughter and no other son. The Will aforementioned has been proved through the testimony of PW-7 Matu Ram, who stated that Pehlad Rai, during his life time, had executed a Will which was registered. He had seen Pehlad Rai along with other attesting witness appending thumb impressions/signatures on the Will Ex.P3, which was duly registered. The Will does not specify any other child and, therefore, the courts below ought to have decreed the suit in entirety.

Mr. Hemant Bassi, learned counsel for the respondent-defendant-cross objector submitted that the Will is outcome of a fraud and misrepresentation. There is no requirement of law under Section 63(c) of the Indian Succession Act and 68 of the Evidence Act. No attempt has been made to examine relative of Pehlad Rai in terms of provisions of Section 69 of the Evidence Act. Plaintiffs had miserably failed to establish that Bhagwati was daughter of Pehlad Rai and owing to the recital in the sale deed, the suit in entirety was required to be dismissed.

Mr. Sharma has drawn the attention of this Court to the Misc.Application bearing No.789-C of 2016 submitted under Order 41 Rule 27 CPC for production of following documents by way of additional evidence to prove that Om Parkash defendant is not the son of Pehlad Rai but Mange Ram:-

- “1) A2 Aadhar card of Om Parkash;
- 2) A3 voter list.”

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

- 1) Whether the judgments and decrees of the trial Court and the Lower Appellate Court affirming the findings suffer from illegality or perversity;*
- 2) Whether there is a misreading of the contents of the Will?*

No doubt, the appellant-plaintiffs had made a concerted effort to prove that Bhagwati was the only daughter born out of the loins of Pehlad Rai, but the plaintiffs, being the sons of Bhagwati, were entitled to entire property, but equally so, I cannot shut my eyes even if Pehlad Rai had no other son. No circumstances have been proved and brought on record to establish that how and under what manner, for the other half share as per the sale deed Ex.D1, Om Parkash son of Pehlad Rai was the co-owner. The question arises in case Pehlad Rai had a son Om Parkash, whether the entire property was to be divided into half share each or in entirety was of Om Parkash. An attempt was made by the defendant to prove the ownership on the basis of the decree of 1979, wherein the defendant was held to be owner of the house in question. Appellant-plaintiffs were not party. Any finding to that effect cannot take away the valuable right in the absence of any contest.

Defendant Om Parkash claiming himself to be son of Pehlad Rai, also obtained an electric connection by submitting an application referring him as son of Pehlad Rai. The Legislature in its wisdom, had protected the interest of the parties by incorporating Section 50 of the Act, which enables the parties to lead evidence to establish parentage as the

science of Deoxyribo Nucleic Acid (DNA) test was not in existence at the relevant point of time.

PW-5 Nanar stated that he is the first cousin of Bhagwati, but could not deny the contents of sale deed Ex.D1 which reflected the half share of Pehlad Rai and the remaining half of his son. In such circumstances, it remained a mystery whether Pehlad Rai had two children, i.e., Bhagwati and Om Parkash. Plaintiffs have not been able to connect the particulars of the school certificate Ex.P2 with the defendant that he was actually the son of Mange Ram.

The additional evidence sought to be placed on record of the period of 2015 cannot be taken into consideration even if an attempt is made to bring certain facts which would enable this Court to render decision effectively. An attempt has been made to place on record relevant material which was not within knowledge but later on acquired.

Now coming to the execution of the Will. It is a registered document, which carries a presumption of truth. PW-7 Matu Ram had been coherent and consistent with regard to the compliance of the provisions of the aforementioned Act. Both the witnesses had signed in the presence of the testator. Even if the Will does not mention about the living son and no other person had come to stake the claim in respect of the property by virtue of the sale deed. For all intents and purposes, the plaintiffs could not claim the share in the property, for, there is no reference in the Will that Pehlad Rai had bought any property to the extent of half share in his name and other half share in favour of defendant Om Parkash.

By taking into consideration the stock of evidence and cumulative reading of the same, I am of the view that the findings of the

trial Court in granting the declaration to the plaintiffs to the extent of half share in the suit property are prefect and legal and cannot be said to be suffering from any perversity or illegality, thus, substantial question No.1 is answered against the appellant-plaintiffs and question No.2 against the respondent-defendant.

For the reasons mentioned above, the appeal and as well as the cross-objections are dismissed. Consequently, the applications for additional evidence are also dismissed.

March 29, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No