

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

RSA No.730 of 1988 (O&M)

Date of decision:05.04.2019

Kela and another

... Appellants

Vs.

Gheesa Ram and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Umesh Aggarwal, Advocate
for the appellants.

Mr. J.L.Malhotra, Advocate
for the respondents.

AMIT RAWAL J. (Oral)

The present regular second appeal is directed against the concurrent findings of facts and law whereby suit of the appellant-plaintiffs for possession of suit land, has been dismissed by the trial Court and affirmed in appeal.

The plaintiffs two in number, daughter and son of Bhola Ram filed the suit against the defendants i.e. brother Ghisa Ram, Murti-sister and grand children, defendants no.3 to 5 alleging that Bhola Ram was the owner of ½ share of total land measuring 122 kanals 7 marlas. Dauli-mother of the plaintiffs died in November 1980 and defendants no.3 to 5 got the suit land fraudulently and surreptitiously by mis-representation. In fact, earlier allegedly obtained the gift deed dated 22.12.1971 from Dhauri which was cancelled vide decree dated 7.1.1976. She was infirm, blind and illiterate

lady. Medical examination of the doctor corroborated that she was hard of hearing and lack of senses of understanding as she had already lost her memory.

Defendants no.3 to 5 contested the suit and stated that Dauli was the owner in possession of suit land. It was alleged that she was not infirm or blind lady or hard of hearing but in good senses, propounded the Will dated 17.5.1979 in favour of defendant no.1 and also suffered a collusive decree dated 21.8.1979.

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

- “1. Whether the plaintiffs and defendants no.1 and 2 are owners of the suit land as alleged?OPP*
- 2. Whether Dauli executed a valid Will in favour of defendant no.1?OPD*
- 3. If issue no.2 not proved whether the decree dated 21.8.1979 in favour of defendant is illegal, void and ineffective on the right of the plaintiffs?*
- 4. Whether the defendants no.3 and 5 are in collusive with the plaintiffs if so to what effect?OPD*
- 5. Whether the suit is not maintainable as alleged?OPD*
- 6. Whether the plaintiffs have no cause of action to file the present suit?OPD*
- 7. Whether the plaintiffs are estopped from filing the present suit by his own act and conduct?OPD*

8. *Relief.*”

The plaintiffs in support of the aforementioned pleadings examined three witnesses and brought on record the documentary evidence spanning from Ex.P1 to Ex.P16 i.e. mutation, statement of Gheesa Ram, copy the judgment and decree, statements, death certificate. All the documents were objected to and as regards, the certificate of the doctor, objection was taken regarding its admissibility. On the other hand, defendants examined six witnesses including attesting witnesses and handwriting expert and brought on record umpteen number of documentary evidence.

Mr. Umesh Aggarwal, learned counsel appearing on behalf of the appellants submitted that both the Courts below have abdicated in not referring to the gift deed of the suit land executed by Dauli in favour of defendants no.3 to 5, which was already set aside, vide judgment and decree dated 07.01.1976 wherein reference of the statement of doctor was noticed to be old, infirm and blind. The Will was surrounded by suspicious circumstances as the propounder failed to explain the same. The collusive decree could not have been looked into in view of the Will. The attesting witnesses have not been coherent and consistent with regard to execution of the Will as one of the attesting witnesses stated that Will was not of 17.5.1979. Once there is already finding qua infirmity defendants failed to eradicate suspicious circumstances as to whether Dauli was hale and hearty in understanding the fall out of the Will, thus, there is illegality and perversity.

Per contra, Mr.J.L.Malhotra, learned counsel appearing on behalf of the respondents submitted that findings of fact and law cannot be said to be suffering from illegality and perversity until and unless there is gross illegality. The attesting witnesses have been coherent and consistent in view of the provisions of Section 68 of Indian Evidence Act and Section 63(c) of Indian Succession Act. The plaintiffs miserably failed to prove on record any statement of doctor, therefore, finding of the previous suit cannot be looked into. The previous judgment and decree is of 07.01.1976 whereas Will is of 17.05.1979 and thus, prayed for dismissal of the appeal.

I have heard the learned counsel for the parties, appraised the judgments and decrees as well as record of the Courts below and of the view that following Substantial Question of Law arise for adjudication of the present appeal:-

“Whether the judgments and decrees of the Courts below are suffering from illegality and perversity resulting into misreading of the oral and documentary evidence on record?”

On going through the record of the case, it is evident that the plaintiff, vide statement dated 05.04.1984 through J.C.Yadav tendered the documents aforementioned. The same reads as under:-

“I tender in evidence Ex.P.1, copy of judgment, Ex.P.2 copy of decree sheet, Ex.P.3 copy of statement of Ghisa Ram (objected to mode of proof), Ex.P.4 copy of Mutation, Ex.P.5, copy of jamabandi year 78-79, copy of medical certificate dt 13/1/72 issued by Dr. J.S Sharma, (Admissibility will be decided at the

time of arguments) Ex.P6, copy of statement (objected to for mode of proof, Ex.P.7 copy of statement Ex.P8, copy of decree sheet, Ex.P.9, copy of judgment, Ex.P.10 copy of judgment, Ex.P.11 copy of judgment, Ex.P12 copy of statement, Ex.P.13 copy of statement, Ex.P.14 copy of death certificate (objected to), Ex.P.15 copy of plaint (objected to), Ex.P.16 copy of written statement and close the evidence of plaintiff in affirmative.

RO&AC

Dt 5.4.84

Sd/- S.J''

From the perusal of the aforementioned documentary evidence, it is evident that various documents were objected to its mode of proof and admissibility but the said objection was not removed.

It is settled law that mere exhibition of the document does not dispense with its proof. In view of the law laid down by the Hon'ble Supreme Court in **Sait Tarajee Khimchand and others vs. Yelamarti Satyam and others 1971 AIR (SC) 1865** and subsequent law.

Coming to the argument of Mr. Umesh Aggarwal with regard to suspicious circumstances, attesting witnesses have been coherent and consistent and stated that they had seen each other signing in the presence of the testator on her directions. The Will is also a registered document which carries a presumption of truth. There can be very valid ground for the testator to bequeath the property in favour of the defendants as the gift deed earlier given by her was set aside at the instance of the plaintiffs and this

could be triggering point of disgruntlement. If at all, there was some truthfulness regarding health condition of the testator, plaintiffs were not prevented to take the assistance of the doctor but no such effort was made. Expert had compared the specimen signatures with the original one and found the same to be of one person.

As an upshot of my findings, arguments of Mr. Aggarwal have not been able to bring the case within the realm of illegality and perversity to form a different opinion than the one arrived at by the Courts below. The substantial question of law above is answered in favour of the respondents and against the appellants.

Resultantly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

April 05, 2019
savita

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