

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

RSA-3000-2003(O&M)

Date of decision:-20.5.2019

Sham Lal Gupta and another

...Appellants

Versus

Subhash Chander and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Puneet Jindal, Senior Advocate with
Mr.Tajinder Singh, Advocate and
Ms.Neha Anand Mahajan, Advocate
for the appellants.

Mr.Gurdial Singh Jaswal, Advocate
for respondent No.22.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiffs –

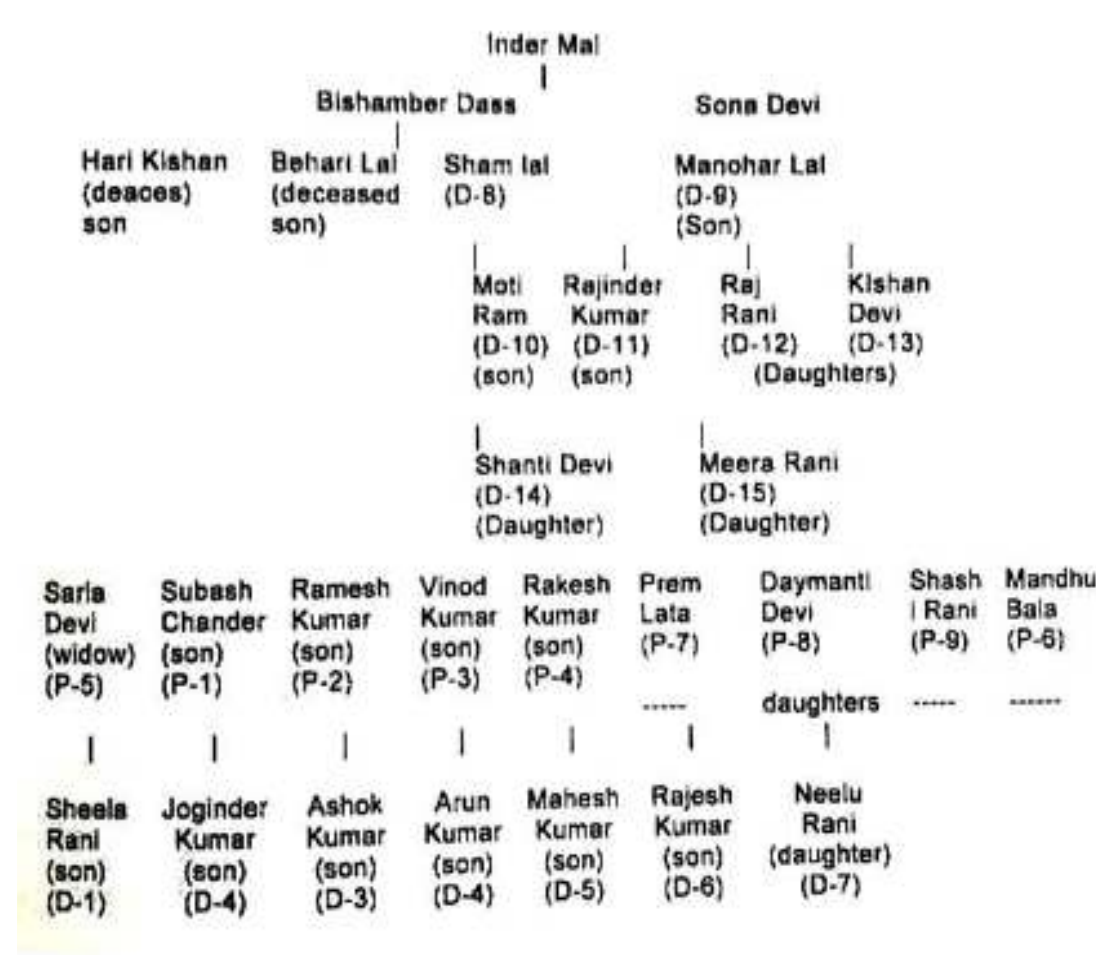
Subhash Chander, Romesh Kumar, Vinod Kumar, Rakesh Kumar,

Smt.Sarla Devi, Madhu Rani, Smt.Prem Lata, Smt.Dymanti Devi and Smt.Shashi Bala had brought a suit against defendants – Smt.Sheela Rani, Joginder Kumar, Ashok Kumar, Arun Kumar, Mahesh Kumar, Rajesh Kumar, Smt.Neelu Rani, Sham Lal Gupta, Manohar Lal Gupta, Moti Ram Gupta, Rajinder Kumar Gupta, Smt.Raj Rani, Smt.Krishna Rani, Smt.Shanti Devi and Smt.Meera Rani seeking partition of the buildings, Shop No.1, Mohalla No.18, Sadar Bazar, Jalandhar Cantt and three storeyed House No.8, Mohalla No.13, Hardyal Road, Jalandhar Cantt., fully detailed in head-note of the plaint and shown in the site-plans attached, besides craving for rendition of account of Sham Lal Gupta – defendant No.8 of income of rents from the above mentioned property for the last six years and to recover the same found due on such rendition of accounts.

As per the version of the plaintiffs, Sh.Bishambar Dass was owner of a number of properties and he had executed a Will dated 24.7.1955 by virtue of which he had bequeathed different properties to different heirs except shop No.1 regarding which he had not made any bequest; that with regard to House No.8, Mohalla No.13 and House No.24, Mohalla No.13 Sh.Bishambar Dass had bequeathed those to his wife Smt.Sona Devi with the observations that she could sell off House No.24 in case of need but she was to enjoy life interest only with respect to House No.8, which she could not alienate and after her death this house was to be inherited by

heirs of Sh.Bishambar Dass; that Sh.Bishambar Dass had died on 5.3.1959 and Smt.Sona Devi having inherited the rights under the Will made sale of House No.24, Mohalla No.13; that Smt.Sona Devi had also died on 11.4.1983 and under the circumstances shop No.1, Mohalla No.18 and House No.8, Mohalla No.13 passed on to heirs of Sh.Bishambar Dass.

For better understanding of the relationship between the parties inter se and with Sh.Bishambar Dass, the following pedigree table has been drawn in the judgment of the trial Court, which is being reproduced as under:



According to the plaintiffs, they are co-owners/co-sharers to the extent of 1/10 share in shop No.1 and 1/6 share of house No.8

and entitled to claim partition of the same; that Sh.Subhash Chander and Ramesh Kumar are in occupation of shop No.1; that Sh.Sham Lal – defendant No.8, who was the eldest member among the heirs of Sh.Bishambar Dass has been receiving rents of the shop, which was opened in the House No.8 on Hardy Road side as well as rent from other property; that he was requested to render account of the income from the joint property and effect partition but he did not accede to such request of the plaintiffs, giving rise to a cause of action to the plaintiffs to file the suit.

On notice, the defendants No.1 to 7, 8 and 11 appeared in the Court and filed separate sets of written statements.

In the written statement filed on behalf of defendants No.1 to 7, they had taken up preliminary objections that the plaintiffs had not described the suit property correctly; that the portion in possession of the answering defendants had not been shown. On merits, the answering defendants contended that the only property which remains to be partitioned is the House and shop in suit i.e. House No.8 and shop No.1; that the answering defendants were owners to the extent of 1/10 share in shop no. 1 and 1/6 share of house No 8. Such defendants however admitted that Sham Lal was collecting the rent of shop on behalf of all the co-sharers and they have no objection to the partition of the suit property. Refuting the remaining allegations in the plaint, such defendants prayed for

dismissal of the suit.

In the written statement filed on behalf of defendant No.8, he took various preliminary objections that the plaintiffs were estopped from making the claim of partition since the property had already been partitioned and the parties had acted upon the distribution of the property according to the Will of late Sh.Bishambar Dass the real owner of the property in question; that no cause of action arose to the plaintiffs to bring the suit; that the suit had been filed with a malafide intention to grab the property belonging to the defendants, who had filed ejectment application against Subhash Chander, the tenant in the property under Sham Lal and Manohar Lal respectively of the portion owned by them in the property bearing No. 8, Mohalla No. 13 and Shop No.1 in Mohalla No. 18; that plaintiffs had not come to the court with clean hands they had concealed the facts that property no.4, which had fallen to the share of Hari Krishan father of defendants No. 1 to 4 and defendants No. 6 to 9 and husband of defendant no. 5, who had demolished the whole portion after getting the same vacated from the tenants, who were in possession of the property in question namely Sham lal and Des Raj. Such defendant further submitted that Bihari Lal husband of defendant no. 1 and father of defendants no. 2 to 7 sold property no. 5 which had fallen to his share in favour of Babu Lal and presently in possession of Surinder Singh and property no. 3

was sold by Sham Lal in favour of Ujagar Singh; that property no. 2 was sold by Manohar Lal in favour of Gurbax Singh and property no. 24 was sold by mother of the parties at the time of marriage of Shanti Devi in favour of Radha Krishan son of Partap Chand Garg; property no. 43 in Mohalla No.13 was sold to Kalu Ram by Moti Lal falling to his share. According to the answering defendant all the properties were sold by respective defendants in their independent right and the money so generated was used by them for their individual purposes. On merits the answering defendant referred to two Wills one said to have been executed by late Bishambar Dass and the other statedly executed by Sona Devi by virtue of which the properties were divided amongst the legal heirs of late Bishambar Dass and Smt. Sona Devi. It is contended that the recitals of the Wills were clear and the parties divided the property in compliance thereof, acting upon those Wills in letter and spirit; that after the death of Smt. Sona Devi Will executed by her came into operation and by virtue of that the properties were owned by different legal representatives of Smt. Sona Devi. In the end, such defendant prayed for dismissal of the suit.

6 From the pleadings of the parties following issues were framed:

1. Whether the plaintiffs are entitled to the partition of the property in dispute? OPP.

2. Whether the defendant No. 8 is the accounting party and is liable for rendition of account with regard to the income of rents of the property in dispute? OPP.
3. Whether the suit property has already been partitioned? OPD.
4. Whether the suit is bad for part partition?OPD.
5. Whether the plaintiffs have not put the joint property for partitioned? If so, its effect?OPD.
6. Whether the suit has not been properly valued for the purpose of court fee and jurisdiction?OPD.
7. Relief.

In order to prove their case, the plaintiff No.1 appeared as PW2 and the plaintiffs had also examined Smt.Amarjit Kaur as PW1.

On the other hand, defendants had examined Sh.Rajesh Kumar as DW1, Sh.Anand Parkash as DW2, Sh.Parmod Kumar as PW3, Sh.Shiv Kumar as DW4, Sh.Sham Lal Gupta (defendant No.8) as DW5, Sh.Manohar Lal Gupta (defendant No.9) as DW6 and Sh.Rajinder Kumar Gupta (defendant No.11) as DW7.

After hearing the learned counsel for the parties, the trial Court decided issues No.1 to 4 in favour of the plaintiffs and against the defendants, issue No.5 against the defendants and in favour of the plaintiffs, issue No.6 in favour of the plaintiffs and against the defendants. Resultantly, the trial Court vide judgment and decree dated 29.2.2000 passed a preliminary decree to the effect that the plaintiffs were owners of the 1/10 share of the shop No.1, Mohalla No.8 and House No.8, Mohalla No.13 the building shown mark red

in the plan attached and fully detailed in the head-note of the plaint and defendants No.1 to 7 were also owners of 1/10th share in these properties and further defendants No.8 to 15 were also owners of 1/10 share each in the abovesaid properties and the plaintiffs were also entitled for rendition of account of rent from the said building from the date of filing of suit.

Feeling aggrieved by the said judgment and decree, the defendants No.8, 9 and 11 namely Sham Lal Gupta, Manohar Lal and Rajinder Kumar Gupta @ Raj Kumar Gupta had filed an appeal before District Judge, Jalandhar, which was assigned to Additional District Judge, Jalandhar, who vide judgment and decree dated 24.2.2003 allowed the same partly, consequently the suit of the plaintiffs was decreed to the effect that the plaintiffs are entitled to the relief of partition to the extent of 1/10 share; defendants No.1 to 7 are co-sharer to the extent of 1/10 share and defendants No.8 to 15 are also co-sharers to the extent of 8/10 share i.e. 1/10 share each out of shop No.1, Mohalla No.18, Sadar Bazar, Jalandhar Cantt and also to ground floor of House No.8, Mohalla No.13, Hardyal Road, Jalandhar Cantt. as described in the head note of the plaint. The remaining part of judgment and decree passed by the trial Court were upheld.

Still feeling dissatisfied with the judgments and decrees passed by the Courts below, the defendants No.8 and 9 namely Sham

Lal Gupta and Manohar Lal have filed the present regular second appeal before this Court, notice of which was issued and respondents, who initially appeared through counsel but subsequently only respondent No.22 appeared through counsel.

I have heard learned counsel for the parties besides going through the records.

The trial Court in its judgment in para No.21 has dealt with the Will dated 24.7.1955 executed by Bishamer Dass and in para No.22 dealt with the Will executed by Smt.Sona Devi. For ready reference these paras are being reproduced as under:

21. After hearing the arguments I came to this conclusion that it is admitted by the plaintiffs and defendants that Bishambar Dass has executed a Will on 24.7.1955 its Urdu version is Ex. P1 and its Hindi translation is also on the file. Both the counsels read this Will. It has not come in the Will regarding the property shop No.1, Mohalla No.18 to whom this property was given by Bishambar Dass and this is clear in this Will that House No.8, Mohalla No.1 is given to Sona Devi and the arguments of the plaintiffs that in the Will it is specifically mentioned that Sona Devi can partition the property during her life time and Sona Devi has no right to make the Will regarding this property. But this argument is not based on any reasoning when a person made a Will although it is

implemented after his death but it is considered that persons had made partitions or given property during her life time. So, there is no restrictions on Sona Devi that she cannot execute any Will during her life time.

22. Regarding the execution of the Will by Sona Devi which is Ex.DW2/1 which court came to this conclusion that it is suspicious that it is admitted fact that Hari Krishan and Bihari Lal are the sons of Sona Devi but in the Will she has mentioned only 4 sons and 4 daughters and she has specifically mentioned that she has 4 sons Sham Lal, Moti Lal, Manohar Lal and Rajinder Kumar and 4 daughters namely Raj Rani, Krishna Devi, Shanti Devi and Meera Rani. Even it is not mentioned that Bihari Lal and Hari Krishan are her sons. Neither she has mentioned any reason why she has ignored these 2 sons nor she has any strain relations with them and it is very difficult for a mother to discriminate the real sons regarding the property unless there was very strain relations.

The trial Court has further observed that signatures of Sona Devi were not tallying on the last and the second page of the Will and letter 'T' is totally different; that a lot of space was there where the Will was complete and where Sona Devi and Anand Parkash had signed; that in Ex.DW4/1 signed by Subhash Chander where he admitted himself to be tenant and and defendant as owner

on the basis of Will over the property; that since the document is neither registered nor its original was produced, mere admission of Subhash Chander is not binding upon the other plaintiffs, who are none-else but his brothers and sisters. The trial Court had come to the conclusion that the remaining property had been partitioned except the property mentioned in the head note of the plaint and both the parties admitted the Will executed by Bishambar Dass for that reason a preliminary decree in the suit had been passed.

However, the First Appellate Court has observed that both the parties admit that Bishambar Dass was absolute owner of the suit property along with other members and he had executed a Will Ex.P1 dated 24.7.1955 vide which he had bequeathed different properties to different beneficiaries and the dispute between the parties is only regarding property No.8 and shop No.1 and the remaining properties have been disposed of by the legatees under Will Ex.P1. The First Appellate Court was of the view that the dispute was regarding interpretation of the Will on following points:

- (a) Whether Sh.Bishambar Dass has given only ground floor to Smt.Sona Devi of House No.8, Mohalla No.13 or entire House to her.*
- (b) Whether under Will Ex.P1 Smt.Sona Devi was given full ownership of restricted estate?*
- (c) If Smt.Sona Devi was given full ownership, whether she*

executed a valid Will Ex.DW2/1?

After referring to Will of Bishambar Dass, the First Appellate Court has observed that Sona Devi was given ground floor of the House No.8 as restricted estate and a restriction was imposed upon her to transfer the portion of house in any manner whatsoever, though she was authorized to collect rent of this house and to partition this house among the sons of Bishambar Dass. It had been mentioned in the Will that in case Sona Devi failed to make partition amongst sons of Bishambar Dass, then all the sons shall be joint owners in equal shares, in that way Bishambar Dass had authorized Sona Devi to partition the house among the six sons in equal shares to avoid any complication after her death. It has also been noticed that under the Will while Sona Devi was given ground floor of House No.8 and House No.24, she was also appointed as guardian of her progeny and was authorized to manage the property of her minor children providing in the Will that for the maintenance of the entire family, the income of utensils shop would be utilized. The First Appellate Court was of the view that it could not be said that the ground floor of house No.8 was given to Sona Devi as her maintenance, rather a specific provision was made for her maintenance and also for the maintenance of her family. For that reason the First Appellate Court was of considered view that Sona Devi had acquired the ground floor of House No.8 as a restricted

estate and she remained as such till her death and after her death all the six sons have become joint owners in equal shares in terms of the Will Ex.P1. Therefore, she was not competent to make a testament regarding that property.

The First Appellate Court has found various faults with Will Ex.DW2/1 by Sona Devi observing that the testatrix had not mentioned name of two sons namely Hari Kishan and Bihari Lal; that the Ex.DW2/1 has absolutely violated the intention of testator of Will Ex.P1; that house No.8 was only given to her three sons namely Sham Lal, Manohar Lal and Moti Lal ignoring remaining three sons namely Rajinder Kumar, Bihari Lal and Hari Kishan; that at the time of the execution of the Will Ex.DW2/1, Bihari Lal was in existence and very much alive, though it is mentioned in the Will that only four sons of Smt.Sona Devi were in existence, therefore, it comes out that either Sona Devi was not in her full sense or the recital in the Will is false; that furthermore no reason had been given in the Will for disinheriting Bihari Lal and Hari Kishan. It has further been observed that when the body of Will comes to an end there is a space of about 8 inches between the last line of the body of the Will and signatures of Smt.Sona Devi. The scribe had not been produced to explain this gap. Furthermore, on the first page of the Will there is a difference of space in the interlining and an attempt was made to conclude the entire portion on the first page and signatures at the end

of the Will on the endorsement at the first page of Will appears to be of different nature when seen with a naked eye.

The conclusions drawn by the First Appellate Court were as follows:

- (a) Under Will Ex.P1 Sh.Bishambar Dass had given life interest to Smt.Sona Devl only qua ground floor of House No.8, Mohalla No. 13.*
- (b) Sh.Bishambar Dass under Will Ex.P.1 had given full ownership to Rajinder Kumar @ Raj Kumar qua entire upper portion of House No.8, Mohalla No. 13.*
- (c) Smt.Sona Devi was holding life interest and restricted estate i.e. qua ground floor of House No.8, Mohalla No. 13, therefore, she was not competent to execute Will Ex.DW2/1.*
- (d) Besides this, the Will Ex.DW2/1 is proved not to be a genuine document.*
- (e) The plaintiffs are found to be co-sharers to the extent of 1/10 share in the shop in dispute as well as in the ground floor of House No. 8, Mohalla No.13 after the death of Smt. Sona Devi. So, they are entitled to preliminary decree of partition to this extent.*
- (f) Similarly defendants No.1 to 7 i.e. heirs of deceased Bishambar Dass are co-sharers to the extent of 1/10 share and defendants No. 8 to 15 are also co-sharers to the extent of 1/10 share each qua ground floor of House No.8, Mohalla No. 13 and also shop No.1 as described in the head note of the plaint.*

Accordingly, the judgment and decree passed by the trial Court were modified.

After hearing the rival contentions of learned counsel for

the parties besides going through the record, I find that the judgment and decree passed by the First Appellate Court is well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. This Court while admitting the appeal vide order dated 17.3.2006 had framed following question of law for determination:

- (i) Whether the Will dated 24.7.1955 executed by Late Bishambar Dass could be interpreted to mean that widow Smt. Sona Devi was given a limited interest of the Ground Floor of House No. 8?*
- (ii) Whether in the facts and circumstances of the case the registered Will executed by Smt. Sona Devi can be ignored, especially when the interest devolved upon her specifically empowered her to give her portion to any of her sons?*
- (iii) Whether the material evidence on record, especially the admission of the plaintiff with regard to Will, dated 17.11.1980, could be ignored by the Courts below?*

However, all the three questions have been adequately answered by the First Appellate Court in its judgment. The inference drawn are that Bishambar Dass had given life interest to Smt.Sona Devi only qua ground floor of House No.8, Mohalla No.13 giving full ownership to Rajinder Kumar @ Raj Kumar qua entire upper portion of House No.8, Mohalla No.13 of that very house; it being so, she was not competent to execute the Will Ex.DW2/1 and any demand to the contrary of plaintiffs was immaterial.

Learned counsel for the appellants has referred to authority **Ramabai Padmakar Patil (DEAD) through LRs & Ors. Versus Rukminbai Vishnu Vekhande and others (2003) 8 Supreme Court Cases 537** wherein it was observed that suspicious circumstance with regard to Will must be removed by propounder and mere fact that the entire property was given to only one of the natural heirs, a widowed daughter, to the exclusion of others, is not a suspicious circumstance when it was done with a view to make provision for the widow who had been left destitute at an early age. It was further observed that if one of the attesting witnesses is examined and no infirmity found in his testimony then non-examination of the person who had typed the Will or the Advocate, who was present at the time of preparation or registration of the Will, cannot be a ground to discard the Will.

However, the authority is not of much help to the case of the appellants since the Will by Smt.Sona Devi though registered has been discarded for various suspicious circumstances, which have been detailed by the First Appellate Court in its judgment and have been discussed above. Those circumstances do cause a doubt in the mind about genuineness of the Will.

No fault is found with the judgment and decree passed by the the First Appellate Court. Those are upheld.

It being so and in view of the findings returned by the

First Appellate Court with which I do not see any reason to disagree,
I conclude that the appeal is without merit and is dismissed
accordingly.

20.5.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No