

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.516 of 2001 (O&M)

Date of Order:08th January, 2019

Balwant Singh and others

..Appellants

Versus

Mohar Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Pawan K. Sharma, Advocate,
for the appellants.

Mr. Sanjay Mittal, Advocate,
for respondents no.1 and 2.

Mr. Saurabh Girdhar, AAG, Haryana.

ANIL KSHETARPAL, J.

Defendants no.6 to 10 are in the regular second appeal against the judgments passed by the courts below decreeing the suit filed by the plaintiff-respondent Mohar Singh, ignoring the registered testament dated 14.11.1974, allegedly executed by late Sh. Sadhu Ram.

The question of law which arise for consideration is:-

“whether the court while deciding the appeal against the judgment and decree is debarred from examining the correctness of the interim orders passed by the trial court or first appellate court against which the revision petition has been dismissed in limine?”

Detailed facts are not required to be noticed as this court intends to remit the case back to the learned trial court. However, certain

facts would be required to be noticed.

Sadhu Ram was predecessor-in-interest of plaintiff as well as defendants no.1 to 5. Defendants no.3 and 4 are 2 sons of the plaintiff whereas defendant no.5 is his (plaintiff's) wife. Whereas defendant nos.1 and 2 are brothers of the plaintiff.

Plaintiff filed a suit on 20.07.1988 claiming that as per the judgment passed by the learned Additional District Judge dated 10.05.1988, property has been held to be Joint Hindu Family property and, therefore, the alleged Will executed by Sadhu Ram and consequent mutation sanctioned on the basis thereof create no right in favour of the defendants. Plaintiff claimed that he is owner to the extent of 1/3rd share in the property and sale deed executed by defendant no.3, his own son in favour of defendants no.6 to 10 is illegal, null and void. Sale deed executed by defendant no.4, his second son was also challenged.

Defendants no.2 to 4 filed a joint written statement contending that the property was self acquired property of Sadhu Ram and the judgment passed by the learned Additional District Judge dated 10.05.1988 is not final between the parties.

At the outset, it must be noticed that the judgment passed by the learned Additional District Judge dated 10.05.1988 has been reversed by this court in Regular Second Appeal No.1849 of 1988. Copy of the judgment has been annexed by the office with the paper book.

Now the only dispute which remains is whether Sadhu Ram executed a registered Will dated 04.11.1974 or not?

It may be noted that first page of the registered Will has been produced as Ex.DW6/A. In fact first page of the Will is complete Will in

itself but for few sentences which were written on the next page. However, on the first page itself, it has been described by the testator that Mohar Singh, plaintiff-respondent, is characterless and is not a good son and he does not serve him. Thus, the testator Sadhu Ram executed the Will bequeathing the property in favour of two sons of Mohar Singh (Grand sons of Sadhu Ram) and his 2 other sons namely Chiranji Lal and Mishri Lal. On page one alleged thumb impression of Sadhu Ram is available. On reverse of the first page, endorsement by the registration authority is present and 2 alleged thumb impressions of Sadhu Ram are also available apart from signatures of 2 attesting witnesses.

Since, second page of the original will was not available, therefore, defendants no.2 to 4 filed an application for permission to lead additional and secondary evidence.

Learned trial court dismissed the application on the ground of delay vide order dated 14.08.1992. Thereafter, case remained pending for framing of the additional issues. Another application was moved by the purchasers under Order 18 Rule 17A of the Code of Civil Procedure for permission to lead additional evidence, which was again dismissed by the learned trial court vide order dated 02.02.1995. The order dated 02.02.1995 basically relies upon the previous order passed by the trial court dated 14.08.1998.

No doubt, the order was challenged before the High Court in Civil Revision No.679 of 1995 which was dismissed by the High Court by recording as under:-

“After hearing learned counsel for the petitioner and going through the order dated 02.02.1995, I do not find

that there is any illegality in the order in not granting any opportunity to lead secondary evidence for proving the alleged Will which has already been Exhibited as DW6/A. In fact, earlier application filed by one of the defendants for leading secondary evidence had already been dismissed by the trial court. Consequently, I find no merit in this revision petition. Dismissed.”

This court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the courts below.

It is apparent from the order passed by the High Court while dismissing the revision petition in limine that this court dismissed the revision petition when finding no reason to interfere in revisional jurisdiction while examining the correctness of the order dated 02.02.1995.

The powers of the court under Section 115 of the Code of Civil Procedure is much narrower as compared to jurisdiction of the court as an appellate court under Sections 96 and 100 of the Code of Civil Procedure. While exercising appellate jurisdiction, the court is required to examine all the facts and the evidence available on the file. Whereas while deciding a revision petition under Section 115 of the Code of Civil Procedure, the court is required to examine correctness of the order passed by a subordinate court. The revisional jurisdiction of the court is discretionary and the court can refuse to exercise the revisional jurisdiction for various reasons. However, correctness of the order passed by the subordinate court against which the revision has been dismissed, can certainly be examined by the appellate court while examining the entire facts, pleadings and evidence

which has come on record. Hence, the jurisdiction of the appellate court is much wider as compared to the jurisdiction of the court in revision.

This court in order to arrive at a correct conclusion, summoned original register (Book No.3) from the office of Sub-Registrar where the Will was registered on 04.11.1974. Register has been produced. In the register, entire Will has been copied by the official of the registration office with his own hand, correctness whereof is certified by the Sub-Registrar, Rewari.

Still further, as noticed above, the first page of the will which has been produced on file as Ex,DW6/A is almost complete Will in itself as first page does bear thumb impressions of the alleged testator and reverse of the first page not only has 2 thumb impressions of the testator but also signatures of the attesting witnesses. In such circumstances, the court ought to have allowed the defendants to produce additional evidence by way of secondary evidence. The courts have been constituted to do justice. The procedures laid down are to help the court in doing justice rather than to scuttle it. Procedure are hand made for justice.

In these circumstances, the orders passed by the trial court dated 14.08.1992 and 02.02.1995 are set aside. Case is remitted back to the trial court to grant opportunity to the defendants to lead additional evidence by way of secondary evidence after summoning the original register from the office of Sub-Registrar which is being returned to the Assistant Advocate General, Haryana. Sufficient opportunities would be granted to both the parties to lead evidence. Thereafter, the trial court would re-decide the matter without being influenced by any observation made by the courts while passing the previous judgments or by this court in this order.

Parties through their counsels are directed to appear before the learned trial court on 23.01.2019.

08th January, 2019
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No