

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 2180 of 2012 (O&M)

Date of decision : 28.3.2019

...

Smt. Phool Wati

.....Appellant

vs.

Smt. Jai Kaur and others

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Sandeep K. Sharma, Advocate for the appellant

Mr. K.P. Singh, Advocate for respondents No. 1 to 3 and 6

Mr. S.P. Chahar, Advocate for respondent No.5.

...

H. S. Madaan, J.

Briefly stated, facts of the case are that plaintiff Smt. Phool Wati, had brought a suit against defendants Smt. Jai Kaur and others seeking a declaration that parties to the suit are legal representatives and heirs to the estate of Sish Ram s/o Not Ram, who was owner in possession of ancestral agricultural land measuring 107 kanal 2 marla situated within revenue estate of Gharshan, District Gurgaon.

As per version of the plaintiff, land of Sish Ram was acquired by State of Haryana, vide award No. 11 of 1989 for establishing Sector 32 and vide award No.8 of 1993, for Sectors 44 and 46. Out of compensation received by Sish Ram he had purchased some more land in village Anwal Tehsil and District Rohtak. That the

amount of compensation received by Sish Ram is deposited in savings bank account No. 22665 of Punjab National Bank, Near Chawla Bus Stand, Najafgarh, New Delhi and some FDRs have been got created out of the amount deposited with the Punjab National Bank, Near Chawla Bus Stand, Najafgarh and Canara Bank, Old Railway Road, Gurgaon. Sish Ram died on 24.6.2003 at Delhi. That a suit for permanent injunction was filed on the basis of alleged Will dated 15.5.2003 titled Smt. Jai Kaur vs. Smt. Patashi and others which is pending in the Court of Senior Sub Judge, Delhi.

In the civil suit so filed, the plaintiff had challenged the Will dated 15.5.2003, on the ground that it was a result of fraud and impersonation etc., for the reason that Sish Ram used to live at Najafgarh, whereas the Will is alleged to be executed at Gurgaon. Sish Ram was aged about 97 years; the Will was not attested by any witness of the locality; that Sish Ram was not having sound disposing mind and he was an illiterate person; that no reasons have been given to exclude the daughters; that the will was an act of impersonation employed by Jai Kaur and other beneficiaries.

The plaintiff knocked at the door of the court with a prayer that Will dated 15.5.2003 be declared as null and void not binding upon her rights.

On getting notice, of suit, respondent Nos. 1 to 3 and 6 had put in appearance and filed a written statement contesting the suit, challenging the locus standi of the plaintiff to file the suit, submitting that a Probate case was also pending on the basis of the Will dated 15.5.2003 in Delhi High Court and that on the basis of the Will dated

15.5.2003, entire movable and immovable properties have been inherited by defendants No. 1 and 4 to 6. Such defendants termed the Will as legal and valid document having been executed by Sish Ram in sound disposing mind, they denied that Sish Ram had purchased any land out of compensation amount received by him. They craved for dismissal of the suit.

In the written statement filed by defendant No.5, he came up with the plea that Sish Ram had executed his last Will on 20.5.2003, whereby the impugned Will dated 15.5.2003, stood cancelled and as per last Will, the plaintiff has no right, title or interest in the suit properties. Dismissal of the suit was sought.

Defendants No. 7 and 8 filed a separate written statement admitting the claim of the plaintiff.

Subsequently, all the defendants absented from the Court and were proceeded against ex parte.

The plaintiff had filed replication to the written statement filed by the contesting respondents,

From the pleadings of the parties, followings issues were framed by the trial Court vide order dated 7.8.2009 :-

1. Whether the will dated 15.5.2003 is not binding upon the rights of the plaintiff? OPP
2. Whether the will dated 15.5.2003 is void and illegal ? OPD
3. Whether the plaintiff has no locus standi to file the present suit? OPD
4. Whether the present suit is not maintainable in the present form? OPD

5. Whether this court has no jurisdiction to try the present suit? OPD

During her ex parte evidence, the plaintiff got her statement recorded as PW-1. She produced her affidavit Exhibit PW 1/A, wherein she reiterated her case as given in the plaint. She tendered copy of jamabandi Exhibit P-1 and copy of will Exhibit P-2.

After hearing the arguments, learned trial Court decided issues No. 1 and 2 against the plaintiff, issues No. 3 to 5 were decided against the defendants. Resultantly, the suit of the plaintiff was dismissed vide judgment and decree dated 1.10.2011.

The plaintiff preferred an appeal against the said judgment and decree passed by the trial Court before the District Judge, Rohtak, which was assigned to Additional District Judge, Fast Track Court, Rohtak, who vide judgment dated 9.2.2012, dismissed the appeal affirming the judgment and decree passed by the trial Court.

Still feeling dissatisfied, the plaintiff has approached this Court by way of filing the present regular second appeal, notice of which was given to the respondents.

Respondents No. 1 to 3 & 6 and respondent No.5 have put in appearance through counsel.

I have heard learned counsel for the parties, besides going through the record and I find that there is no merit in the appeal.

It may be mentioned here that the dispute between the parties was with respect to the estate of Sish Ram, who had expired on 24.6.2003. Plaintiff Phool Wati is daughter of Sish Ram, whereas defendants are stated to be his other legal heirs. After death of Sish

Ram, his inheritance opened. Since inheritance does not remain in abeyance, normally estate of deceased devolve upon his legal heirs by natural succession unless the deceased is shown to have executed a legal and valid Will, regarding his properties in favour of a particular person. In that way testamentary succession is deviation from the natural succession. If a person wants to derive any interest in estate of deceased by testamentary succession, it is for him to prove the said fact to be more precise that the testator, in sound disposing mind, had executed a legal and valid Will in favour of such person. If the beneficiary under the Will is able to prove that the deceased had executed a legal and valid Will in his/her favour, then the said instrument is to be given effect to and not otherwise.

Here in the present case, the plaintiff had filed a suit seeking a declaration that Will dated 15.5.2003 is null and void, not binding upon rights of the plaintiff, whereas defendants No. 1 and 4 to 6 who had appeared and filed written statement had set up a Will dated 15.5.2003 in their favour. They had come up with a plea that a civil suit for permanent injunction titled as 'Smt. Jai Kaur vs. Smt. Patashi and others' was pending in the Court of Senior Sub Judge, Delhi, on the basis of that Will and that a Probate case No. PR 37 of 2003 titled Jai Kaur vs. State was pending in the High Court of Delhi, regarding grant of probate on the basis of said Will.

Whereas defendant No.5 in the written statement filed by him, had come up with a plea that as a matter of fact Sish Ram had executed his last, legal and valid Will dated 20.5.2003, bequeathing his properties to his sons Sukhbir Singh (answering defendant) and

Rajinder Singh and wife Smt. Patasi in equal shares. In that way, the answering respondent alongwith Rajinder Singh and Patasi Devi had inherited all the movable and immovable properties left by deceased Sish Ram. After filing of the written statements, such respondents had stopped putting in appearance in the Court and were proceeded against ex parte.

It would be relevant to refer to the discussion by the trial Court on issues No. 1 and 2, which is as follows :-

“9. The onus of proving these issues was on the plaintiff. Learned counsel for the plaintiff by placing reliance upon the plaintiff evidence produced in the present case argued that Sish Ram died on 24.6.2003. However, alleged Will dated 15.5.2003 marked as Ex.P2 is illegal null and void and not binding upon the rights of the plaintiff because it was based upon fraud. Executant of the Will lived at Najabgarh but the Will was executed at Gurgaon, it was not attested by any witness of the locality. Sish Ram executant of the Will was of 97 years of age and was not in sound disposing mind and he was an illiterate person and Will was silent about the fact as to why daughters have been left out. It was argued that plaintiff was entitled to relief of as prayed for.

10. In the present case Will Ex.P2 dated 15.5.2003 alleged to have been executed by Sish

Ram has been challenged by the plaintiff on the ground of fraud and it has been alleged that the said Will was surrounded by various suspicious circumstances because the executant was of very old age and was not in sound disposing mind. No witness of the locality had attested the Will. The Will was executed at Gurgaon. Since as per Section 68 of Indian Evidence Act, it a document is required by law to be attested, then it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution. One of the requirements of case, due execution of Will is its attestation by two more witnesses. In the present case, none of the attesting witness of the Will were examined even otherwise except for the oral testimony of plaintiff there is nothing on record to show that Sish Ram executant of the Will was very old and was not having sound disposing mind. Will Ex.P2 which has been produced by the plaintiff is merely a photocopy and unregistered. Under these facts and circumstances, it cannot be presumed and declared that the impugned Will is illegal, null and void. Accordingly, issues No. 1 and 2 are therefore decided against the plaintiff.”

Aggrieved with the decision rendered by the trial Court, the plaintiff preferred an appeal which was assigned to the Additional

District Judge, Fast Track Court, Rohtak. The First Appellate Court vide its judgment and decree dated 9.2.2012, dismissed the appeal filed by the plaintiff.

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

I do not find anything wrong with the conclusions drawn by the trial Court, as has been discussed above it is beneficiaries under the respective Will who should have proved such Wills in accordance with law, by examining one attesting witness at least and in addition to that scribe of the Will etc. should also have been examined. But it was not so done by them. Only photocopies of the Wills had been placed on record. The execution of such Wills having not been proved, in accordance with law and very existence of the Wills having not been established, there was no occasion to declare those to be illegal, null and void etc., as alleged by the plaintiff. With respect to the litigation between the parties, pending in the Civil Court at Delhi and in High Court of Delhi, a perusal of the interim orders passed by this Court goes to show that as incorporated in order dated 9.5.2016, learned counsel for the appellant had informed that Probate case had been dismissed for non-prosecution. Though learned counsel appearing for respondents No. 1 to 3 and 6 had stated that another suit seeking claim in probate, on the basis of Will had been filed at Delhi and sought short accommodation on that account or otherwise. On that very day, as incorporated in the interim order that learned counsel appearing for the appellant had submitted that in the proceedings seeking succession certificate of Sish Ram, the respondent defendant

had suffered statement that there was no injunction, they should have no objection in case the estate of the deceased is divided amongst all the legal heirs in equal shares.

It being so, the Wills set up by the defendants, are not shown to have been given effect to by any Court of competent jurisdiction.

In view of the same, the estate of the deceased is to devolve by natural succession unless the court of competent jurisdiction holds that any of the Will set up by the defendants was a legal and valid document. The defendants respondents have not been able to show that any of the Wills set up by defendant No. 1, 4 to 6 or defendant No.5, had been held to have been executed by the deceased in a sound, disposing mind, as such legal and valid documents.

The proceedings before High Court of Delhi and before Civil Court are stated to have been terminated.

Under the circumstances, the declaration as prayed for was rightly declined by the Courts below to the plaintiff.

Further more, no substantial question of law is shown to have been arisen in this case.

There is no merit in the appeal and the same stands dismissed.

28.03.2019
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(H.S. Madaan)
Judge

Whether speaking / reasoned
Whether reportable

Yes / No
Yes / No