

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

Date of decision: 24.7.2019

1.

RSA No. 4906 of 2012(O&M)

Seema Sharma

.....Appellant

VERSUS

General Public and others

.....Respondents

2.

RSA No. 4907 of 2012(O&M)

Seema Sharma

.....Appellant

VERSUS

Sanjay Kumar and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Vivek Slathia, Advocate for the appellant.

Mr. V.K. Sandhir, Advocate for the respondent No.2 in RSA
No.4906 of 2012 and
respondent No.1/caveator in RSA No.4907 of 2012.

REKHA MITTAL, J. (Oral)

This order will dispose of RSA Nos.4906 and 4907 of 2012 as identical questions of law and fact are involved for adjudication. For facility of reference, facts are taken from RSA No.4907 of 2012.

The present litigation pertains to property left behind by Sh. Baldev Raj Sharma and the real contest is between Seema Sharma daughter of Baldev Raj Sharma as appellant and Sanjay Kumar son of

Baldev Raj Sharma, though Sucheta another daughter of Baldev Raj Sharma has also been impleaded as a party. Seema Sharma filed suit for declaration to challenge sale deed dated 08.01.1997 in respect of property bearing khasra No.76, House No.4492/14-23 MCA measuring 193 square yards situated at Abadi Ranjitpura, Amritsar and sale deed dated 16.06.1997 qua property bearing khasra No.29-min – 30 min situated at rakba Amritsar Urban, Abadi Damganj, Amritsar on the premise that the same are result of fraud, misrepresentation and without consideration. She also claimed partition of suit properties claiming 1/3rd share on the basis of natural succession to Sh. Baldev Raj.

The respondent/defendant contested the challenge qua the aforesaid sale deeds and further set up Will dated 29.10.1993 registered on 03.11.1993 purported to be executed by late Sh. Baldev Raj Sharma who admittedly passed away in the year 1995. Both the Courts have consistently rejected challenge to the aforesaid sale deeds and accepted plea of the respondent in respect of the Will propounded by him.

The undisputed facts of the case are that Sh. Baldev Raj was married to Pushpa and out of their wedlock, two daughters namely Seema and Sucheta and two sons Sanjay Kumar and Rajesh Kumar were born. Pushpa died in the year 1972 and Baldev Raj performed marriage with Urmila. Baldev Raj passed away on 14.11.1995. Rajesh, second son of Baldev Raj, died on 24.01.1996. Rajesh was unmarried and had no issue. Urmila, the second wife of Baldev Raj died in the year 1996.

Counsel for the appellant would argue that Sanjay Kumar – respondent filed application in January 1997 for grant of succession

certificate in respect of debts and securities left behind by Baldev Raj, Rakesh Kumar and Urmila wherein he claimed himself to be the only legal heir and concealed the factum of Seema and Sucheta being daughters of Baldev Raj Sharma and sisters of Rakesh Kumar. The appellant filed suit for declaration to challenge the sale deeds aforesaid while claiming partition by separate possession of her share to the extent of 1/3rd in the suit properties on 17.07.1998. She also filed an application to be impleaded as a party in the proceedings for grant of succession certificate initiated by respondent – Sanjay Kumar. Sanjay Kumar filed written statement but later he filed an application for amendment of the written statement in order to set up Will dated 29.10.1993 purported to be executed by Sh. Baldev Raj Sharma whereby Urmila was given limited estate in the properties of Sh. Baldev Raj Sharma and on death of Urmila, the same to be inherited by Sanjay Kumar and Rakesh Kumar to the exclusion of Seema Sharma and Sucheta, daughters of the alleged testator.

Counsel for the appellant would argue that since in the proceedings for grant of succession certificate, Sanjay Kumar had not set up any testament, it creates a doubt that Baldev Raj Sharma executed a Will in his favour. It is further argued that if Baldev Raj Sharma had actually executed a Will in favour of Sanjay Kumar and Rakesh Kumar, there was no reason for Sanjay Kumar to get executed sale deed dated 08.01.1997 and 16.06.1997 purported to be executed by the appellant and her sister Sucheta. Another submission made by counsel is that the original Will has not been produced on record and respondent was permitted to prove the Will by way of secondary evidence but subject to

proving its loss. It is argued that Sanjay Kumar has not adduced any evidence to prove loss of original document, therefore, evidence adduced by him to prove the Will will not hold good to accept plea of the respondent/defendant. He has further argued that Will is surrounded by suspicious circumstances as one of the recitals in the Will is that Seema was adopted by her maternal grandparents but the respondent has failed to adduce any evidence with regard to any ceremonies of adoption and admittedly there is no document on record to prove adoption of Seema by her maternal grandparents. He has also challenged findings of the Courts in respect of the sale deeds in favour of respondent No.1 with the submission that the sale deeds are without consideration and are the result of misrepresentation/fraud.

Counsel representing respondent No.1, on the contrary, has supported consistent findings recorded by the Courts negating challenge to the aforesaid sale deeds and accepting the Will propounded by Sanjay Kumar. It is argued that since Sanjay Kumar recovered a certified copy of the Will from the records of his father in the beginning of 1998, he possibly could not claim his rights in the succession proceedings on the basis of Will pleaded by way of amendment of the written statement. It is further argued that this plea of the respondent gets substantiated from the fact that in the written statement originally filed to the suit instituted by Seema Sharma in July 1998, Sanjay Kumar has not raised any plea with regard to deceased Baldev Raj Sharma having left behind a Will in favour of his sons. It has further been argued that since Sanjay Kumar was never in possession of the original Will and he only recovered certified copy of

the Will from the records of his father, he had no means to prove loss of the original document. To refute contention of the appellant that the Will is surrounded by suspicious circumstances in view of one of the recitals highlighted by counsel for the appellant, it is argued that it has been sufficiently established on record that Seema Sharma had been residing with her maternal grandparents in Tarn Taran and she took her entire education from Tarn Taran. It is argued that Seema Sharma is guilty of concealing the material documents from the Court i.e. her testimonials recording her to be resident of Tarn Taran despite her cross examination being deferred in order to enable her to produce those documents. According to counsel, Seema Sharma has admitted in her cross examination that there is no documentary evidence available with her to prove that after the death of her mother Pushpa, she stayed with her father's family at Amritsar or had received education at Amritsar. It is further submitted that even in the Will, it has not been specifically mentioned that Seema was taken in adoption by her maternal grandparents or any ceremonies of adoption were performed when Seema was taken away by her maternal grandparents on account of death of her mother in the year 1972 when Seema was a little child and Baldev Raj Sharma admittedly performed second marriage with Urmila.

I have heard counsel for the parties, perused the paper-book and records.

At the outset, it is pertinent to mention that the appellant has failed to adduce sufficient much less cogent evidence to establish her plea that sale deeds dated 08.01.1997 and 16.06.1997 are the result of

misrepresentation or fraud etc, required to be proved akin to criminal charge. In this view of the matter, findings of the Courts in respect of the sale deeds challenged by Seema Sharma are liable to be affirmed and ordered accordingly.

This brings the Court to grievance of the appellant in respect of the Will propounded by Sanjay Kumar. Sanjay Kumar filed an application for amendment of the written statement to plead the registered Will dated 29.10.1993 purported to be executed by Sh. Baldev Raj Sharma. He raised a specific plea that certified copy of the Will was found in the records of his father in January 1998. Counsel for the appellant has failed to point out any materials on record that this plea of Sanjay Kumar is proved to be false. In the given circumstances, there was no occasion for Sanjay Kumar to set up the Will in question in proceedings for grant of succession certificate initiated in January 1997 or to doubt the Will in question merely because the appellant and her sister executed two sale deeds in January 1997 and June 1997 in favour of Sanjay Kumar. In this view of the matter, contention raised by counsel for the appellant with regard to late production of Will in question is misconceived and accordingly rejected.

Counsel for the appellant, in response to a query, would fairly inform that registered Will propounded by the respondent has been proved by examining its scribe and one of the attesting witnesses. Sanjay Kumar filed an application for proving the Will by secondary evidence and the same was allowed by the trial Court subject to just proof of loss. On perusal of order dated 03.08.2010 whereby the trial Court allowed the

application to prove Will by way of secondary evidence, it is evident that no such plea has been raised that original Will has been lost. On the contrary, plea of the respondent is that he learnt about the said Will in 1998 when certified copy of the same was found in the old records of Sh. Baldev Raj Sharma. As the respondent never raised a plea that the original Will was ever in his possession or the same has been misplaced, it would be travesty of justice if the respondent is called upon to prove the loss of original Will. In this view of the matter, the appellant cannot be heard to say that since the respondent did not prove loss of original document, the certified copy thereof proved by one of the witnesses from the office of registering authority cannot be relied upon.

This brings the Court to the question of Will being surrounded by suspicious circumstances. Perusal of the document would reveal that the testator created rights in favour of his wife Urmila to the extent that she would be entitle to enjoy the property during her lifetime but she would not be entitle to alienate the same by way of mortgage, sale, gift etc. After death of Urmila, the property was held to be ownership of Rajesh Kumar and Sanjay Kumar with specific reference to the properties of which Sanjay Kumar would become the owner and ones which would bestow upon Rajesh Kumar. There is also reference to the daughters namely Sucheta Sharma and Seema Sharma but they have been excluded from inheritance by saying that a sum of Rs.2,00,000/- has been kept for marriage of Sucheta Sharma and his second daughter Seema Sharma had been sent to the house of her maternal grandparents as a daughter and her bringing up and studies is also being taken care of at her maternal

grandparents' house (nanke ghar). Nothing has been recited in the Will that Seema Sharma has been adopted by her maternal grandparents much less there were ceremonies of adoption at the time of sending Seema Sharma to the house of her maternal grandparents. As has been rightly argued by counsel for the respondent that there is sufficient evidence on record that Seema Sharma had been studying at Tarn Taran and she has failed to produce any document to prove that she had been residing in Amritsar at the house of Sh. Baldev Raj Sharma or she had been getting education from an institution at Amritsar. That being so, contention raised by counsel for the appellant that one of the recitals in the Will is false for want of proving adoption of Seema Sharma is the result of misinterpretation of the said recital in order to support cause of the appellant who has lost the legal battle before the Courts below. In this view of the matter, I find it difficult to differ with the findings of the Courts while accepting plea of the respondent that deceased Baldev Raj Sharma left behind Will dated 29.10.1993 on the basis whereof Seema and Sucheta were excluded from inheritance qua immovable property owned by the deceased and detailed in the Will. There is nothing on record that besides the properties detailed in the Will, the deceased left behind any other property which was either inherited by Urmila as limited estate or was inherited by respondent on death of Urmila and Rakesh Kumar, therefore, claim of the appellant with regard to her entitlement of 1/3rd share in suit properties or she being entitle to claim partition by separate possession of those properties has rightly been rejected by the Courts.

No other point has been raised.

In view of what has been discussed hereinbefore, the appeals fail and are accordingly dismissed with costs.

JULY 24, 2019 'D. Gulati'	(REKHA MITTAL) JUDGE
Whether speaking/reasoned	: yes/no
Whether reportable	: yes/no