

In the High Court of Punjab and Haryana at Chandigarh

RSA- 109 of 2013 (O&M)
Date of Decision: 22.7.2019

Sunder Lal and others

---Appellants

versus

Krishna and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Amit Jain, Advocate
for the appellants
Mr. Pankaj Maini, Advocate,
for respondents No. 13 and 14

Rekha Mittal, J.

Challenge in the present appeal has been directed against consistent findings recorded by the courts whereby suit filed by Ram Kishan son of Godha Ram (since deceased) represented by his sons Sunder Lal and others claiming testamentary succession to estate left behind by Kishni Bai on the basis of Will dated 10.5.1976, was dismissed but the plaintiff was held entitle to 1/36th share in the suit land on the basis of natural succession. Appeal preferred by Ram Kishan through his Lrs was dismissed by the First Appellate Court vide judgment and decree dated 19.9.2012.

Smt. Kishni Bai was the limited owner of land in dispute by virtue of judgment and decree passed in Civil Suit No. 234 titled “Kishni Devi vs. Motan Dass”. The plaintiff claimed that she became absolute owner in possession of land in dispute by virtue of Section 14(1) of the Hindu Succession Act, 1956 (in short “the Act”). It is averred that after death of Lakhi Ram, plaintiff became joint owner in possession of land to

the extent of 1/3rd share of Kishni Bai and her husband Kanhayia who died issueless. Kishni Bai executed Will dated 10.5.1976 in favour of the plaintiff and she died on 20.1.1977. After death of Kishni Bai, plaintiff became owner in possession of the suit land. Defendant No. 1 had sold land measuring 66 kanal 4 marlas to defendant No. 6, vide sale deed No. 3464 dated 12.10.1998 and defendant No. 2 sold land measuring 66 kanal 5 marlas in favour of defendant No. 7, vide registered sale deed No. 3496 dated 14.10.1998. He challenged the aforesaid sale deeds being wrong, illegal, null and void and liable to be set aside. It is further averred that Smt. Kishni Bai handed over the Will to Bansidhar son of Dhola Ram, one of the attesting witnesses of the Will but Bansidhar in collusion with defendants No. 1 to 5 neither produced the same before the revenue authorities nor returned the original Will to the plaintiff. In the alternative, it was prayed that if the court comes to the conclusion that no Will was executed by Kishni Bai in favour of the plaintiff, he is entitled to get his share being one of the legal heirs of deceased Kishni Bai.

Defendants No.1, 2, 6 and 7 filed joint written statement and raised preliminary objections pertaining to locus standi; cause of action; maintainability of the suit; suit being time barred and has been filed in collusion with defendants No. 3 to 5. They admitted that Kishni Bai was owner in possession for the purpose of maintenance till her death but she was not full-fledged owner of the land in dispute. They also admitted that decree dated 31.12.1957 was passed in favour of Shmt. Kishni Bai whereby it was held that she will be owner in possession of 1/6th share of land measuring 2722 kanal 4 marlas but she will not be entitled to transfer the

land received through decree. They further denied that after commencement of the Act, Kishni Bai became full-fledged owner of the suit land. Allegations with regard to Kishni Bai having executed Will dated 10.5.1976 in favour of the plaintiff were controverted with the averments that alleged Will was ignored by the revenue authorities namely Assistant Collector Ist Grade, Hisar and Commissioner Hisar and mutation No. 1861 sanctioned in favour of the plaintiff on the basis of Will was set aside with a direction that mutation would be sanctioned in favour of legal heirs of Kishni Bai, as per the Act.

Counsel for the appellants would argue that findings of the courts that either the plaintiff was not successful in proving the Will, in accordance with law or the same is shrouded by suspicious circumstances are the result of misreading of evidence. It is argued that in Rapat No. 389 dated 23.7.1980 (Ex. P5), it was recorded that one Ram Chander son of Tulsidas produced oral Will of Kishni Bai in favour of the plaintiff, after about three years of death of Kishni Bai on 20.1.1977 and mutation was sanctioned on 16.8.1980. It is argued that since the Will in question was not a registered Will, for that reason, in the Rapat Ex. P5 there is reference to oral Will, thus, the said fact neither can cause prejudice to rights of the plaintiff nor findings recorded by the courts in this regard are correct and legal. It is further argued that it is usual practice followed by the revenue authorities that when the Will is not a registered Will, it is referred to as oral Will. In addition, it is submitted that in Rapat Ex. P5, it has also been mentioned that Ram Kishan produced oral Will and had there been no Will in writing, the question of producing the so called Oral Will would not have

arisen.

Another submission made by counsel is that in the order pertaining to surplus land in the hands of Smt. Kishni Bai, there is reference to mutation No. 1861 dated 16.8.1980 and the said mutation having been sanctioned in favour of Ram Kishan son of Godha Ram on the basis of Will. According to counsel, in view of document Ex. P5 and order dated 31.10.1980 passed in the proceedings under the Haryana Ceiling of Land Holdings Act, 1972 (in short “Act of 1972”), there is sufficient material on record to prove existence of Will in question in favour of Ram Kishan.

Counsel would urge that one of the attesting witnesses of the Will Nar Singh Kumar Lambardar PW3 was examined and his testimony is more than sufficient to prove the Will in consonance with the provisions of Section 68 of the Indian Evidence Act. It is further argued that nothing tangible and material has been elicited in cross examination of Nar Singh Kumar to affirm findings of the courts that his statement is not worthy of credence and reliance to prove the Will in question.

Counsel representing the respondents, on the contrary, has supported consistent findings recorded by the courts with the submission that scope of intervention in concurrent findings of fact is quite limited for the reason that the court on re-appreciation of evidence can not set aside the findings merely because another view is possible. It is argued that findings recorded by the courts to reject the Will propounded by the plaintiff are based upon materials on record, therefore, cannot be faulted with. It is further argued that facts elicited in cross examination of Ram Kishan go a long way to prove that neither Ram Kishan ever rendered services to Kishni

Bai who was residing in Hisar since 1958 nor the deceased had any love and affection for Ram Kishan to execute the Will in his favour and deviate from natural succession when admittedly Kishni Bai died issueless and her husband pre-deceased her.

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

There is no denial that plaintiff is one of the legal heirs of deceased Kishni Bai and there is contest between the plaintiff on one side and other legal heirs of the deceased as contesting party. The appellant-plaintiff sought to claim exclusive ownership to the property of Smt. Kishni Bai on the basis of testamentary succession in the light of unregistered Will dated 10.5.1976 marked as Ex. D1.

Before adverting to the submissions made by counsel for the parties, it is appropriate to recapitulate that Will is a sacred document and propounder thereof has to prove the same in consonance with the provisions of Evidence Act and dispel suspicious circumstances, if any, surrounding the Will. Equally settled is that propounder has to produce cogent and convincing materials on record to satisfy conscience of the court that the testament represents true expression of wish and will of deceased who is no longer available in the world.

In the case at hand, the original Will has not seen the light of day as photocopy thereof has been produced after seeking permission to prove the document by way of secondary evidence. As has rightly been argued by counsel for the respondents, facts elicited in cross examination of Ram Kishan on 7.9.2007 create a serious doubt with regard to deceased

having decided to bequeath her estate in favour of Ram Kishan to the exclusion of her other heirs. A relevant extract from cross examination of Ram Kishan in Hindi but translated in English, reads as follows:-

“Kishni Bai died in Hisar. At that time, I was resident of village Bhorhiya. There is distance of 50 Kms between Bhorhiya and Hisar. Kishni Bai had been residing alone in Hisar. I do not remember the house number. Kishni Bai was residing in Hisar after 1958. I do not know that defendants No. 6 and 7 are in possession of disputed land. I was residing in Salemgarh in 1958 and saw the land at that time and thereafter I had not seen it. But I keep on visiting Salemgarh village. I have no land in village Bhorhiya. I came to know about the Will in the year 1980 when the SDO of surplus called me. The SDO for the first time told me that there is Will in your (Ram Kishan) favour by Kishni Bai.

The statement of Ram Kishan, in examination in chief by way of affidavit Ex. PW1/A, is conspicuously silent if he had been rendering any services to deceased or deceased had special attachment/love and affection for him.

Perusal of the aforesaid extract leaves no manner of doubt that Kishni Bai was residing alone in Hisar and the plaintiff even did not know her house number. There is nothing on record suggestive of the fact that Ram Kishan had been visiting Kishni Bai much less helping her either during life time of her husband or later. Ram Kishan has admitted that he had not seen the suit land since 1958 and he is not even aware that suit

land is in possession of defendants No. 6 and 7.

This court cannot overlook that ordinarily a person would will away his property in favour of its beneficiary(s) to the exclusion of other natural heirs only if there are special reasons/circumstances for the testator to do so. In the instant case, no reason is forthcoming that prevailed upon or persuaded the deceased to bequeath her entire property in favour of Ram Kishan. Not only this, the aforesaid discussion that Ram Kishan never rendered services to the deceased falsifies and belies recital in the Will that Ram Kishan had been rendering services to the deceased or the deceased had love and affection for Ram Kishan. Further this fact creates a serious doubt that the Will portray free and true wish of the deceased as to how her property would be dealt with after departure from the world.

Indisputably, in the report Ex. P5, there is no reference to date, month or year of the Will propounded by the plaintiff. On the contrary, the report makes reference that Ram Chander son of Tulsidas presented an oral Will with a request to enter mutation qua inheritance of Kishni Bai who died on 20.1.1977. The contention raised by counsel for the appellant that the Will is treated as oral Will if the same is not a registered document, does not find corroboration from evidence on record much less on the basis of authentic text or precedent in this regard. The appellant did not examine a revenue officer to prove that oral Will refers to a Will in writing but unregistered one. The authority under the Act of 1972 has not made reference to Will dated 10.5.1976. In the given circumstances, it is difficult to accept contention of the appellant that the document Ex. P5 and order dated 31.10.1980 passed under the Act of 1972 proved existence of Will in

question.

The plaintiff examined Nar Singh Kumar PW5, an attesting witness of the Will dated 10.5.1976. He tendered into evidence his Ex. PW5/A by way of examination in chief. In para 2 of the affidavit, he has deposed in Hindi but translated in English, reads thus:-

“That Smt. Kishni Bai got scribed Will dated 10.5.1976 according to her free will, without any pressure and in sound disposing mind in favour of Ram Kishan son of Godha Ram son of Topan Mal resident of village Bhorhiya Khera tehsil and District Fatehabad in respect of property through Sh. Devender Mehta son of Gokal Chand resident of Mehta Nagar, Hisar in the presence of witnesses i.e. he himself and Bansidhar son of Dhola Ram, Dhola Ram son of Niyamat Ram, Hari Chand son of Kanwar Bhan and Dharampal son of Topan Dass resident of Mehta Nagar, Hisar tehsil and District Hisar. Sh. Devender Mehta had scribed the Will in his handwriting on the instructions of Smt. Kishni Bai, in the presence of witnesses.”

Statement of Nar Singh Kumar with regard to scribing of the Will at the behest of Kishni Bai gets falsified and belied in view of his cross examination wherein he stated that the Will had already been scribed when he arrived at the relevant place.

In para 3 of affidavit Ex. PW5/A, the witness has deposed that after death of Smt. Kishni, the Will was given effect to in the revenue record vide Rapat No. 389 dated 23.7.1980 by the deponent and Ram chander son of Tulsi Ram resident of Mehta Nagar, Hisar and he along with Ram

Chander attorney appended their signatures on the aforesaid rapat in the presence of patwari.

In his cross examination, he has deposed that he does not remember if mutation with regard to Will was sanctioned in his presence or otherwise. These contradictions in statement of Nar Singh Kumar assume greater significance when examined in the light of discussion made hereinbefore. In this view of the matter, I find it difficult to accept contention of the appellant that testimony of Nar Singh Kumar is more than sufficient to establish that Will in question was executed by Smt. Kishni Bai and that too according to her free will and in sound disposing mind, by way of intervention in consistent findings recorded by the courts. As a cumulative effect of the aforesaid discussion, it can safely be held that neither the findings recorded by the courts suffer from any legal flaw nor the present appeal raises a question of law that needs determination in second appeal.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed with costs.

(Rekha Mittal)
Judge

22.7.2019

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No