

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

RSA-1656-2013(O&M)

Date of decision:-7.5.2019

Smt.Rajwanti and another

...Appellants

Versus

Smt.Vidya Devi and others

...Respondents

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

Present: Mr.Roopak Bansal, Advocate
for the appellants.

Mr.Sudhir Aggarwal, Advocate
for respondents No.1 and 2.

Mr.M.S. Rana, Advocate for
Mr.Ashish Kapoor, Advocate
for respondent No.4.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiffs – Smt.Vidya Devi and Smt.Kamla Rani, both daughters of Late - Sh.Deep Chand had brought a suit against defendants i.e. Smt.Rajwati wife of Sh.Ranbir Singh son of Sh.Deep Chand, Sh.Randhir Singh and Sh.Ranbir Singh sons of Sh.Deep Chand as well as India Oil Corporation, New Delhi seeking rendition of accounts besides a declaration and consequential relief of permanent injunction on the averments that Sh.Deep Chand son of Sh.Badlu, resident of 145/25, Arya Nagar, Sonipat being a Freedom Fighter

was allotted a petrol pump at Mohana by the India Oil Corporation; that subsequently Sh.Deep Chand had a partnership with defendant Nos.1 and 2 – Smt.Rajwati and Sh.Randhir Singh inasmuch as Sh.Deep Chand was having 50% share, whereas Smt.Rajwati and Sh.Randhir Singh 25% each in the business; that the petrol pump was being managed by Sh.Deep Chand and defendants No.1 and 2 were the sleeping partners; that Sh.Deep Chand died on 25.1.2004 leaving behind two daughters i.e. the plaintiffs and two sons i.e. defendants No.2 and 3; that Sh.Deep Chand had executed a registered Will dated 5.3.2003 bequeathing his share in the petrol pump to the plaintiffs, whereas bequeathing his immovable properties to his sons i.e. defendants No.2 and 3; that after death of Sh.Deep Chand, defendants No.1 to 3 started running the petrol pump usurping all the income therefrom; that Sh.Deep Chand was having bank accounts and he used to deposit his earnings in those accounts; that the share in the business of petrol pump and deposits in bank accounts of Sh.Deep Chand were to go to the plaintiffs in terms of his Will. However after death of Sh.Deep Chand, defendants No.1 to 3 neither rendered nor agreed to render any accounts to plaintiffs; that they did not pay any amount to them; that the defendants did not permit the plaintiffs to visit the petrol pump and see the account books since they had intention of grabbing the entire profits. As such the plaintiffs brought the suit in question.

On notice all the defendants put in appearance through counsel. Defendants No.1 to 3 filed joint written statement, whereas defendant No.4 filed separate written statement. Defendants No.1 to 3 contested the suit *inter alia* admitting that the petrol pump in question was allotted to Sh.Deep Chand and defendants No.1 and 2 joined him later on as partners with permission of defendant No.4 – Indian Oil Corporation as per rules of the company. However, it was denied that defendants No.1 and 2 were sleeping partners. According to the answering defendants, they were actively engaged in the management of petrol pump; that defendants No.1 and 2 had joined the business by investing money as independent partners; that Sh.Deep Chand had not executed any valid Will on 5.3.2003; as a matter of fact, he had executed a Will dated 25.6.1985 and got the same registered vide which he had bequeathed all his moveable or immovable properties in favour of defendants No.2 and 3; the Will set up by the plaintiffs was dubbed as a forged and fabricated document not representing the real wish of Sh.Deep Chand. According to the answering defendants, plaintiff No.1 was often visiting the deceased Sh.Deep Chand and she might have been successful in getting signatures of Sh.Deep Chand on alleged Will by playing fraud, making misrepresentation and exerting undue influence; that defendant No.3 is neither a partner nor sharing the returns from the petrol pump; that he being son of the deceased is

one among the successors/heirs of the properties of Sh.Deep Chand under Will dated 25.6.1985 and he has a right in the share of Sh.Deep Chand in the partnership business; that defendants No.1 and 2 are absolute right holders of 50% share in the business, 25% each as partners; that Sh.Deep Chand did not intend to give anything to the plaintiffs as he had fulfilled all his obligations towards them getting them married and they were well settled in their own families. According to the defendants, plaintiffs were nobody to ask for rendition of accounts; that no part of estate of Sh.Deep Chand had devolved upon the plaintiffs; that the business is being run in a regular manner. Refuting the remaining allegations in the plaint, such defendants prayed for dismissal of the suit.

In the written statement filed by defendant No.4, it took various preliminary objections to wit the suit was bad for misjoinder of the parties; that there was no relationship of principal and agent between the plaintiff and defendant No.4; that plaintiffs had no locus standi or cause of action to bring the suit. On merits, it was contended that the petrol pump was allotted to Sh.Deep Chand by answering defendant from Freedom Fighter Quota and Sh.Deep Chand was managing the petrol pump. It was never disclosed to the answering defendant that Sh.Deep Chand had a partnership with any other person. The answering defendant denied knowledge regarding the Will etc. In the end, such defendant also prayed for dismissal of

the suit.

The plaintiff had filed replication controverting the allegations in the written statements whereas reiterating the averments in the plaint.

On the pleadings of the parties, following issues were framed:

1. Whether the plaintiffs are entitled to the relief of rendition of account from the defendants? OPP.
2. Whether the suit is bad for misjoinder of parties? OPD.
3. Whether there is no relationship of principal and agent between the plaintiffs and defendants? OPD.
4. Whether plaintiffs have no locus standi and cause of action to file the present suit? OPD.
5. Relief.

In order to prove their case, the plaintiff No.1 Smt.Vidya Devi had got recorded her statement as PW4 besides examining Sh.M.K. Goyal, Branch Manager SBP as PW1, Sh.Mahabir Parsad Jain as PW2, Sh.Rang Lal, Lamberdar as PW3.

On the other hand, the defendants had examined Sh.Sruesh as DW1, Sh.Randhir Singh as DW2, Dr.Madan Chauhan as DW3.

After hearing the learned counsel for the parties, the trial Court decided issue No.1 in favour of the plaintiffs and against the

defendants, issue Nos. 2 and 3 against the defendants being not pressed, issue No.4 against the defendants. Resultantly, the suit of the plaintiffs was decreed to the effect that defendants were given three months time starting from the date of passing of judgment to render proper and actual account of running of the petrol pump after dated 29.1.2004 to the plaintiffs and the plaintiffs were declared rightful owners of the share of Sh.Deep Chand to the extent of 50% i.e. 25% each in Mohana Service Station. It was further directed that defendant No.4 would not transfer the ownership of the petrol pump in favour of defendant Nos.1 to 3 or any other person at their instance until and unless consent of the plaintiffs was obtained in this regard. A preliminary decree was prepared by giving liberty to the plaintiffs to approach the Civil Court after expiry of three months given to the defendants but within three months thereafter for preparation of final decree as per law. This was so done vide judgment and decree dated 8.5.2010.

Feeling aggrieved by the said judgment and decree, the defendants No.1 to 3 had filed an appeal in the Court of District Judge, Sonipat, who vide judgment and decree dated 27.10.2012 dismissed the said appeal upholding the judgment and decree passed by the trial Court.

Being dissatisfied with the judgments and decrees passed the Courts below, the defendants No.1 and 2 filed the present regular

second appeal before this Court, notice of which was issued and respondents No.1, 2 and 4 appeared through counsel.

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

The dispute between the parties who are near relations is with regard to inheritance of their common ancestor Sh.Deep Chand. The plaintiffs are daughters of Sh.Deep Chand, whereas defendant No.1 is daughter-in-law and defendants No.2 and 3 are sons of late Sh.Deep Chand. The plaintiffs have approached the Court on the basis of registered Will dated 5.3.2003, whereas the defendants while denying execution of Will set up by the plaintiffs have come up with another Will dated 25.6.1985. The plaintiffs had examined Sh.Mahabir Parsad Jain, Deed Writer as PW2, who stated that he had typed the Will Ex.P7 at the asking of Sh.Deep Chand and had read over the contents thereof to him and he put his thumb impressions on the Will accepting the contents of it to be correct; that the Will was attested by Sh.Suresh Kumar son of Sh.Subbe Singh and Sh.Rang Lal, Lambardar in presence of Sh.Deep Chand as attesting witnesses and he had entered the Will in his register at Serial No.102 dated 5.3.2003 getting signatures of Sh.Deep Chand in the register and at that time Sh.Deep Chand was having sound mind. In his cross-examination he remained unshattered. PW3 Sh.Rang Lal, Lambardar, an attesting witness of the sale deed also proved its execution in

addition to its registration stating that Sh.Deep Chand and both the attesting witnesses had appeared before Sub Registrar for registration where they were photographed and the Will was registered. Thus due execution of the Will stands established. The registration of the Will prima facie goes to show its due execution. It also comes out that Sh.Deep Chand had executed the Will in sound disposing mind. On the other hand, the defendants failed to establish execution of any Will by Sh.Deep Chand in their favour. Both the Courts below have returned concurrent finding that Will set up by the plaintiffs stands duly proved on the record with result after death of Sh.Deep Chand, the plaintiffs have become owners to the extent of 50% in the petrol pump.

No substantial question of law arises in this appeal.

Therefore, I do not find any merit in the present appeal and do not see any reason to disturb the legal, valid and well reasoned judgments passed by the Courts below.

The appeal stands dismissed accordingly.

7.5.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No