

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

RSA-2609-2013(O&M)

Date of decision:-2.12.2019

Shashi Kant

...Appellant

Versus

Amarjit Dutta (since deceased) through his legal heirs and others

...Respondents

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

Present: Mr.Arun Jain, Senior Advocate with
Mr.Amit Jain, Advocate for the appellant.

Mr.Tarun Sharma, Advocate for
Mr.R.S. Bajaj, Advocate
for respondent No.3.

Mr.T.V.S. Lehal, Advocate
for respondents No.8 to 16.

H.S. MADAAN, J.

CM-11723-C-2017

Heard.

For the reasons mentioned in the application, the same is allowed and legal heirs of respondent No.13 – Kulwant Singh as mentioned in para No.2 of the application are brought on record for the purpose of this appeal only. Amended memo of parties is taken on record.

RSA-2609-2013(O&M)

Briefly stated, facts of the case are that plaintiff Shashi Kant son of Jagirdar Dutta had brought a suit against his brother Amarjit Dutta, married sisters – Smt.Parveen Bali, Smt.Ramesh Vaid, Smt.Sumati and others seeking a declaration that he is owner in possession of land measuring 146 kanals 18 marlas fully described in head-note of the plaint situated at village Chak Alia, Tehsil and District Gurdaspur and the entries on the basis of mutation No.1394 regarding estate of Smt.Parkash Devi widow of Sh.Jagirdar Dutta are erroneous, illegal, null and void, consequently sale deed dated 26.3.1999 in respect of land measuring 16 kanals in favour of Harbhajan Singh etc. defendants No.8 to 12 and sale deed dated 26.3.1999 regarding the land measuring 8 kanals 17 marlas in favour of defendant No.13 executed by Amarjit Dutta defendant No.1 is illegal, null and void and so are the revenue entries based on those sale deeds in favour of defendants No.8 to 13.

As per the version of the plaintiff, Jagirdar son of Ram Chand was the original owner of the suit land; he had executed a valid Will dated 28.7.1985 in favour of his wife Parkash Devi with a rider that after death of Parkash Devi, the properties in her hands would go to his son Shashi Kant; Jagirdar had died on 4.8.1985 and mutation No.1214 on the basis of Will was sanctioned in favour of Parkash Devi; Parkash Devi had died on 21.3.1991 and as per the

Will executed by Jagirdar, after death of Parkash Devi, the plaintiff became the absolute owner of the suit property; defendants No.1 to 7 have no right, title or interest in the suit property but they in collusion with the revenue staff got sanctioned the mutation of inheritance in their favour. According to the plaintiff that mutation is wrong and is not binding upon him; that defendants No.8 to 12 claimed that they had purchased land measuring 16 kanals vide sale deed dated 26.3.1999; defendant No.13 claimed that the sale deed dated 26.3.1999 regarding 8 kanals 17 marlas. According to the plaintiff those sale deeds are unlawful, void, not operative against the rights of the plaintiff; on the basis of those sale deeds, the defendants started threatening the plaintiff to take possession of the suit land from him, giving rise to a cause of action to the plaintiff to bring the suit.

On notice, defendants No.1 to 4 did not appear and they were proceeded against ex-parte. The remaining defendants appeared. Defendants No.5 to 7 filed a joint written statement, whereas defendants No.8 to 13 came up with a separate joint written statement.

In the joint written statement filed by the former, they contended that on the basis of Will dated 28.7.1985, Parkash Devi became the absolute owner in possession of the suit land after the death of her husband Jagirdar and mutation No.5214 was sanctioned

in her favour; after death of Parkash Devi, her estate devolved upon all the legal heirs by way of natural succession.

In the separate joint written statement filed on behalf of defendants No.8 to 13 they contended that mutation No.1394 was sanctioned in favour of legal heirs of Parkash Devi after her death and such defendants had purchased the land measuring 16 kanals and 8 kanals 17 marlas through valid sale deeds for valuable consideration without notice and after purchasing the land, they have come in possession thereof, in that way they are *bona fide* purchasers of the said land.

All the defendants prayed for dismissal of the suit.

The plaintiff had filed replications 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 plaintiff is entitled to declaration as prayed for?
OPP.
2. Whether the mutation No.1394 and sale deed dated 26.3.1999 is illegal, null and void? OPP.
3. Whether the suit is bad for affixation of Court fee? OPD.
4. Whether the plaintiff has got no cause of action? OPD.
5. Relief.

In order to prove his case, the plaintiff had got his statement recorded as PW1 besides tendering certain documents.

On the other hand, the defendants had examined Sh.Harbhajan Singh as DW1 and Sh.Kulwant Singh as DW2.

After hearing learned counsel for the parties, the trial Court decided issues No.1 to 4 against the plaintiff. Resultantly, suit of the plaintiff was dismissed with costs. This was so done vide judgment and decree dated 27.7.2009

Feeling aggrieved by the said judgment and decree, the plaintiff had filed an appeal in the Court of District Judge, Gurdaspur, which was assigned to learned Additional District Judge, Ad hoc(Fast Track Court), Gurdaspur, who vide judgment and decree dated 13.2.2013 dismissed the same.

Being dissatisfied with the judgments and decrees passed by the Courts below, the plaintiff has knocked at the door of this Court by way of filing regular second appeal praying that the same be accepted, the impugned judgments and decrees passed by the Courts below be set aside and suit of the plaintiff be decreed.

On getting notice of regular second appeal, the respondents/defendants No.3 and 8 to 16 have appeared through counsel.

I have heard learned counsel for the appellant besides going through the record

Both the Courts below on analysis of the factual and legal position have come to the conclusion that after death of testator bequest becomes absolute and then no contingency will affect the said inheritance. In this case it was observed that Jagirdar had died and as such his property as per Will devolved upon Parkash Devi absolutely. In the absence of Will on the part of said Parkash Devi, her estate devolved upon all her legal heirs by natural succession and the mutation was rightly sanctioned on the basis of natural succession of Parkash Devi in favour of her legal heirs and no fault can be found with the same. Furthermore, on the basis of the said mutation Swaran Singh son of Buta Singh through sale deed Ex.P3 and Harbhajan Singh, Hardip Singh, Rup Singh and Sarup Singh through sale deed Ex.P4 had purchased certain portions of the suit land, therefore, they are *bona fide* purchasers for consideration and without notice, as such protected under law and sale deeds in their favour cannot be declared to be illegal, null and void.

The First Appellate Court has dealt with the matter in a detailed manner keeping in view all the aspects of the case, then coming to the conclusion that nothing was wrong with the mutation vide which inheritance of Parkash Devi had gone by natural succession. Relevant part of discussion for ready reference is reproduced as under:-

On the arguments of learned counsel for the

parties the question that arises for consideration are these:-

1. Whether under the Will Jagirdar Dutta bequeathed an absolute estate in favour of his wife Smt.Parkash Devi or restricted right.

2. Whether the subsequent bequeath in the Will in favour of son of the Jagirdar Dutta is invalid if it is found that Jagirdar Dutta bequeathed an absolute interest in the property in favour of his wife Smt.Parkash Devi.

Both the questions are over lapping and this Court, therefore, considers both the questions together. Law is that in order to gather the testator's intention the Will has to be read as a whole. Or in other words ordinarily the rule of construction of a Will is that a Will has to be read in its entirety and effort should be made that no part of it is excluded or made redundant or it is the duty of the Court to reconcile if there is any apparent inconsistency in a Will. In a judgment reported that 1959 SCR 1309 it has been held that:

If there be admissible to construction of a document, one of which will effect to all the clauses therein while the other will render one or more of them nugatory. It is the former that should be adopted on the

principle expressed in the maxim ' ut res magis valeat quam pereat.

This Court now look into the Will in the light of the rule of construction propounded by the Apex Court in a judgment (supra). The first part of the Will provided that after the death of testator Jagirdar Dutta of the Will his wife Smt.Parkash Devi would be entitled to the properties of Jagirdar Dutta as mentioned in the Will with the right of transfer. The second part of Will is that in case Smt.Parkash Devi dies leaving any portion of the properties mentioned in the Will the testator's son Shashi Kant (appellant/plaintiff) would inherit the same. It is obvious from the aforesaid first part of the Will that the testator Jagirdar Dutta conferred on an estate by providing that his wife Smt.Parkash Devi would be entitled to get the property with the right of alienation/transfer. When the property has been given by the Jagirdar Dutta to Smt.Parkash Devi with the right of alienation/transfer in the Will dated 28.7.1985 such bequeath is a conferment of a absolute estate. In other words at the cost of repetition it can be said that when Jagirdar Dutta stated in the Will dated 28.7.1985 that his wife Smt.Parkash Devi would get the property with right

of alienation/transfer, therefore, the use of those words conferring unfettered power of transfer showed that Jagirdar Dutta's intention was to confer an absolute estate on her and consequently the subsequent clause that in case she dies leaving any portion of those properties his son Shashi Kant will inherit the same would be of no effect. From a construction of the contents of the entire Will dated 28.7.1985 it can be said that testator intended to confer an absolute estate with full power of alienation to his wife and he did not intend to confer a mere life estate on her. In this regard the Court is fortified by the pronouncement of Hon'ble Apex Court reported at AIR 1972 Supreme Court 639 wherein it has been held that:-

Construction of Will - Testator stating in his Will that his wife would get the property absolutely with full right of alienation – Testator must be deemed to have intended to confer absolute estate on her and not a mere life estate – subsequent clauses would be of no effect.

Learned counsel for the appellant has referred to authorities i.e. **Shyamal Kanti Guha (D) through LRs & ors. Versus Meena Bose, 2008(3) RCR(Civil)619, Sharad Subramanyan Versus**

Soumi Mazumdar & Ors, 2006(3) RCR(Civil) 447, Uma Devi Nambiar and Ors. Versus T.C. Sidhan(Dead), 2004(1) RCR(Civil) 320 and *Balwant Kaur Versus Chanan Singh, 2000(2) RCR(Civil)719*. These judgments do not help the appellant in advancing his case due to different facts and circumstances and the context in which such observations had been made.

Whereas learned counsel for respondents No.8 to 16 has referred to authorities *Mauleshwar Mani Versus Jagdish Prasad, 2002(2) RCR(Civil)77, Smt.Talkeshwari Devi Versus Ram Ran Bikar Prasad Singh and another, 1972 AIR(SC) 639, Jupudy Pardha Sarathy Versus Pentapati Rama Krishna and others, 2016(1) RCR(Civil) 1* and *Radha Sundar Dutta Versus Mohd. Jahadur Rahim and others, 1959 AIR(SC) 24*, which support their version.

I do not find any reason to differ with the view taken by the Courts below that after death of testator Sh.Jagirdar, the beneficiary Smt.Parkash Devi was to inherit his estate on an absolute owner and not as a limited owner. The will cannot be interpreted to mean that Smt.Parkash Devi was just a limited owner and not vested with full ownership rights. The testator had not put any rider on her exercising ownership rights in the property inherited by her vide the will. Rather she was free to make alienation and out of the same as absolute owner. The will cannot be interpreted to mean that

Smt.Parkash Devi was debarred from exercising right of ownership in any manner. Therefore, on her death her estate going to her legal heir by natural succession cannot be justified. The mutation was rightly sanctioned in favour of all the legal heirs of Smt.Parkash Devi by natural succession. They could dealt with the property inherited from Smt.Parkash Devi in any manner they felt like, encroaching, making alienation. The sale deed so effected cannot be termed as illegal and void for any such reason.

The judgments passed by the Courts below are based upon proper appraisal and appreciation of evidence correct interpretation of law.

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 and decrees passed by the Courts below.

The appeal stands dismissed accordingly.

2.12.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No