

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

RSA-3318-2015(O&M)

Date of decision:-22.7.2019

Rajinder Kumar Sharma and another

...Appellants

Versus

Lokender Kumar Sharma and another

...Respondents

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

Present: Mr.Sanjay Vashisth, Advocate
for the appellants.

Mr.Namit Khurana, Advocate
for respondents No.1 and 2.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiffs –
Lokender Kumar Sharma and Surender Kumar Sharma, both sons of
late Sh.Balram Sharma, residents of MCD Colony, Azadpur, New
Delhi had filed a suit against Rajender Kumar Sharma and his wife
Veena, both defendants, residents of Adarsh Nagar, New Delhi

seeking a declaration that the plaintiffs are owners in possession to the extent of 2/3 share in house No.54 situated at Krishna Colony, Yamuna Nagar, Tehsil Jagadhri, District Yamuna Nagar and other properties of their deceased father Sh.Balram Sharma and document, if any, allegedly executed by Sh.Balram Sharma in favour of defendants is null and void and a consequential relief praying for grant of permanent injunction restraining the defendants from dispossessing the plaintiff from the house in suit and from alienating the house or changing its existing nature in any manner.

As per version of the plaintiffs, Sh.Balram Sharma was owner of the house in suit besides other properties; that earlier he was residing at Yamuna Nagar but thereafter he was brought to Delhi by the plaintiffs where the plaintiffs and defendant No.1 served him in all manners; that Sh.Balram Sharma had died on 25.9.2008 leaving behind the plaintiffs and defendant No.1 as his only heirs; that wife of Sh.Balram Sharma had pre-deceased him; that during his life time Sh.Balram Sharma with his free will and consent, had executed a valid Will dated 28.3.2008 in favour of the plaintiffs and defendant No.1 and as such after demise of Sh.Balram Sharma, the plaintiffs and defendant No.1 have inherited the properties of their deceased father in equal shares i.e. to the extent of 1/3 share each, however, the defendants started claiming to have inherited the whole estate of Sh.Balram Sharma exclusively on the basis of some document

allegedly executed by Sh.Balram Sharma. Feeling aggrieved, the plaintiffs brought the suit in question.

On notice, both the defendants appeared and filed a joint written statement contesting the suit *inter alia* raising preliminary objections that the plaintiffs did not have locus standi to bring the suit; that they had concealed material facts from the Court; that the plaintiffs were not entitled to 2/3 share in the suit property or any other property left by Sh.Balram Sharma since he had executed a registered Will dated 8.2.2005 in favour of the plaintiffs and defendants vide which $\frac{1}{2}$ share of the house in question was given to defendants in equal shares in lieu of the services rendered by them, whereas the remaining open space of the property in question was given to the plaintiffs in equal shares; that it was the last and final will of Sh.Balram Sharma – deceased and the will set up by the plaintiffs was not a genuine document but was a forged and fabricated. On merits, such defendants controverted the material assertions in the plaint pleading that plaintiffs are settled in Delhi since long and both the defendants had been serving their father Balram Sharma in all respects. It was denied that plaintiffs had ever served Balram Sharma. It had been contended that Balram Sharma had resided with the defendants till his death and it were they, who had performed his last rites and ceremonies; that the registered will dated 8.2.2005 had been executed by Balram Sharma in sound

disposing mind more than three years before his death; that the defendants had spent considerable amount on construction of the house and household articles lying therein belonged to them; that the house was self acquired property of the deceased, as such he had every right to alienate the same by way of registered Will. Refuting the remaining allegations, the defendants prayed for dismissal of the suit.

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

1. Whether the plaintiffs are owners in possession to the extent of 2/3 share in house No.54, measuring 45 x 45 feet alongwith superstructure constructed therein, situated at Krishna Colony, Yamuna Nagar alongwith other property of deceased Balram Sharma? OPP.
2. Whether the plaintiffs are entitled to a decree for permanent injunction? OPP.
3. Whether suit of the plaintiffs is not maintainable? OPD.
4. Whether civil Court has no jurisdiction to entertain the present suit? OPD.
5. Relief.

Following additional issues were also framed:

- 2A Whether deceased Balram Sharma had executed a legal and valid Will on dated 28.3.2008 as alleged by plaintiffs?

OPP.

2B Whether deceased Balram Sharma has executed duly registered Will dated 8.2.2005 as alleged by defendants? OPD.

Both the parties led evidence in respect of their claims.

Plaintiff Lokender Kumar Sharma appearing as PW1 tendered in evidence his affidavit Ex.PW1/A wherein he repeated on oath case of the plaintiffs as given in the plaint. Jitender Kumar Sharma (PW2), an attesting witness of the Will dated 28.3.2008 vide his affidavit Ex.PW2/A deposed in that respect.

On the other hand, Sh.Rajender Kumar DW1 an attesting witness of will dated 8.2.2005 in his affidavit Ex.DW1/A, deposed regarding its execution by Balram Sharma – deceased. Sh.Jai Dev, Registration Clerk – DW2 had brought the record pertaining to Will dated 8.2.2005 and deposed regarding its registration. Defendant No.1 Rajinder Kumar Sharma appeared as DW3 and filed his affidavit Ex.DW3/A reiterating on oath the case of the defendants.

In rebuttal, the plaintiffs had tendered a copy of letter dated 6.9.2001 as Mark X and discharge slip as Mark-Y.

After hearing the learned counsel for the parties, the trial Court decided issues No.1 and 2 in favour of the plaintiffs and against the defendants, issues No.2A and 2B in favour of the plaintiffs and defendants, respectively, issues No.3 and 4 against the defendants being not pressed. Resultantly, the trial Court vide

judgment and decree dated 27.4.2013 decreed the suit of the plaintiffs granting them a declaration to the effect that they are owners in possession to the extent of 2/3 share in the house in question and the defendants were restrained from alienating the suit property more than their share.

Feeling aggrieved by the said judgment and decree, the defendants had filed an appeal before District Judge, Yamuna Nagar at Jagadhri, which was assigned to Additional District Judge, Yamuna Nagar at Jagadhri, who vide judgment and decree dated 28.4.2015 dismissed the appeal and upheld the impugned judgment and decree passed by the trial Court.

Still feeling dissatisfied with the judgments and decrees passed by the Courts below, the defendants have filed the present regular second appeal before this Court, notice of which was issued to the respondents-plaintiffs, who have appeared through counsel.

I have heard learned counsel for the parties besides going through the records and I do not find any merit in the appeal.

In the present case, the parties are not at variance that Sh. Balram Sharma, who had died on 25.9.2008 was the previous owner of the house in suit and he had left behind his three sons i.e. plaintiffs and defendant No.1 as his legal heirs. The plaintiffs are claiming inheritance on the basis of an unregistered will dated 28.3.2008, whereas the defendants are basing their claim on a registered will

dated 8.2.2005. The Courts below on analysis of the evidence brought on file by the contestants concluded that the plaintiff and defendants have proved the due execution of their respective Wills set up by them. The deposition of the respective attesting witness fulfills the necessary ingredients for proof of execution of a will in terms of Section 68 of the Indian Evidence Act and Section 63 of the Indian Succession Act. Though learned counsel for the appellants has submitted that the will set up by the appellants/defendants is a registered one and it should be given preference over the will set up by the plaintiffs, which is an unregistered documents. However, this contention is vehemently opposed by learned counsel for the respondents contending that the law does not give preference to a registered will over an unregistered will and rather the will, which is later in time is to be given effect to. In support of his such contention, he has referred to judgment ***Mahesh Kumar (Dead) by LRs Versus Vinod Kumar and others, 2012(2) RCR(Civil)493*** by the Apex Court wherein it was observed that once the execution of the second Will is held as duly proved, the earlier Will automatically becomes redundant and the second Will represents the last wish of the testator.

After hearing learned counsel for the parties, I find that though registration of a Will gives rise to presumption of due execution but then a registered Will is certainly not having an edge over the unregistered Will and as per law both stand on the equal

footing. Therefore, merely by the fact that the Will set up by the defendants is a registered document does not mean that it is to be given more weightage than the Will set up by the plaintiffs, which is an unregistered document, since the execution of both the Wills stand duly proved on record.

Learned counsel for the appellants has raised another contention that in the Will set up by the plaintiffs, there is no mention of the testator having earlier executed a registered Will, which is a suspicious circumstances, as such, Will claimed by the plaintiffs should be discarded. Whereas learned counsel for the respondents/plaintiffs has vehemently contested this submission stating that this is hardly a circumstance to reject the Will. In support of such contention, he has referred to a judgment by a Co-ordinate Bench of this Court in **Mohinder Singh and others Versus Lachhman Singh and others, 2014(1) CivCC 296** wherein it was observed that non mentioning of execution of earlier Will is not a suspicious circumstance so as to render it as unacceptable.

Having considered the submissions of learned counsel for the parties and going through the judgment referred to by learned counsel for the respondents/plaintiffs, I find that though non mentioning of earlier Will in the unregistered Will does create a doubt in the mind, however, that is not enough to treat that Will as a suspicious document, since otherwise there is nothing to show that

the Will set up by the plaintiffs is a result of fraud, misrepresentation or has been procured by exerting force, undue influence upon the testator.

The concurrent findings on the issues so recorded do not suffer from any irregularity or illegality. The findings are affirmed. No fault is found with the judgments and decrees passed by the Courts below. Those are upheld.

No substantial question of law arises in this appeal.

It being so and in view of the concurrent findings returned by the Courts below with which I do not see any reason to disagree, I conclude that the appeal is without merit and is dismissed accordingly.

22.7.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No