

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.4132 of 2018 (O&M)
Date of Decision : 30.10.2019

Bachni since deceased through LR

.....Appellant

Versus

Shangara Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr.Rahul Rampal, Advocate for the appellant.

ARUN PALLI, J. (Oral)

Suit filed by the plaintiff-appellant was dismissed by the trial Court, vide judgment and decree dated 25.04.2012 and as even the appeal preferred against the said decree failed and was dismissed on 20.02.2017, her successor-in-interest is before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

In brief, the case set out by the plaintiff-Bachni was that she was married to Babu Ram son of Dhani Ram resident of village Karawar, Tehsil Balachaur, District Nawanshahr, who happened to be the owner in possession of the suit property. Babu Ram died intestate and issue-less on 18.08.2001, and thus, post his death plaintiff inherited his estate. For, defendants No.1 to 6, succeeded to have the suit property, mutated in their names on the basis of Will dated 13.08.1996, alleged to have been executed

by Babu Ram, thus the suit.

In the written statement filed by defendants No.1, 2, 4, 5, 9 and 14, it was admitted that plaintiff was widow of late Babu Ram but she was residing in village Pachrinda, District Ropar, for the last 56 years. Further, she never succeeded to the estate of the deceased, for vide registered will dated 13.08.1996, late Babu Ram had bequeathed his property in favour of the defendants. In fact, Babu Ram and the plaintiff had a strained relationship and barely after about 2/3 years of her marriage she left her matrimonial home and started residing at village Pachrinda, District Ropar, and never returned. Therefore, the suit was liable to be dismissed.

Upon consideration of the matter in issue and the evidence on record both the Courts concurrently concluded: defendant Shangara Singh appeared as his own witness and testified in his deposition that Babu Ram died issue-less on 18.08.2001. Post marriage Bachni resided with Babu Ram only for 2/3 months whereafter a dispute arose between them and she had even filed suit for maintenance against Babu Ram. In the given situation and as Babu Ram was looked after by the defendants, who happened to be his brothers, he vide a registered Will dated 13.08.1996 (Ex.D1) bequeathed his estate in their favour. Rissal Singh (DW6) one of the attesting witness of the Will (Ex.D1) proved its execution in his deposition. He testified that said Will was also witnessed by Ex-Sarpanch Surjit Singh and was scribed by Chander mani who entered the same in his register. Whereafter it was presented before the Sub Registrar Balachaur who read out and explained the contents thereof to Babu Ram, who after

admitting the correctness thereof thumb marked the endorsement Ex.D1/1. Pritpal Singh (DW7), who happened to be the son of Surjit Singh the other attesting witness to the Will, identified the writing and signatures of his late father. Likewise, Chander Mani (DW1), Deed Writer, brought the summoned register to prove the entry as regards the Will in question, executed by late Babu Ram, and also identified the Will Ex.D1. As regards litigation between Babu Ram and defendants No.1 to 5, undoubtedly, Suit No.2 of 1996, was instituted by Shingara Singh and others against Babu Ram. However, the specific case of the defendants was that said suit was filed by them at the instance of Babu Ram himself as he intended to deprive Bachni of his estate and to transfer the suit property in favour of his brothers but as subsequently he executed the Will in question and produced the same in those proceedings the said suit was dismissed as withdrawn. And that being the situation, it could hardly be construed as a suspicious circumstances to discard the Will Ex.D1. Even otherwise, Bachni had filed suit No.5 of 1999 against Babu Ram for maintenance which was decided on 02.03.2001, vide judgment and decree dated Ex.D6 and D7. Further, an analysis of the said judgment revealed that the stand of Babu Ram in the written statement filed in those proceedings was that Bachni was residing in village Pachrinda, District Ropar, for the last 52 years and fact even as regards execution of the Will dated 13.08.1996, in favour of his brothers was also mentioned therein. Meaning thereby that testator had acknowledged the existence of the Will in question during his life time. Further, as per judgment Ex.D6, Babu Ram had also given 16 kanals 1

marla of land, situated in village Atal Majara to the plaintiff for her maintenance. Significantly, Bachni expired during the pendency of the suit and alleged to have executed a Will dated 16.12.2008, in favour of Gurmukh Singh son of Gurdial Singh resident of Andhari, District Mohali, who pursued the matter post her death. However Gurmukh Singh the alleged successor-in-interest of Bachni failed to prove the execution and validity of the said Will. That being so, the only and the inevitable conclusion that could be reached: the execution and the validity of the Will dated 13.08.1996 (Ex.D1), was duly proved, and thus, the suit was liable to be dismissed.

On being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the conclusions recorded by both the Courts were either contrary to the record or suffered from any material illegality. No ground is made out to interfere with the concurrent findings recorded by both the Courts below. The appeal being devoid of merit is accordingly dismissed.

30.10.2019

*Manoj Bhutani***(ARUN PALLI)****JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No