

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

RSA No.4859 of 2017 (O&M)
Date of Decision.02.05.2019

Badamo and others ...Appellants
Vs
Bhateri Devi and others ..Respondents

2. RSA No.2598 of 2018 (O&M)

Bhateri Devi ...Appellant
Vs
Badamo and others ..Respondents

3. RSA No.4577 of 2018 (O&M)

Bhateri Devi ...Appellant
Vs
Badamo and others ..Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Arun Jindal, Advocate &
Mr. Arihant Jain, Advocate
for the appellants in RSA No.4859 of 2017.

Mr. Ajay Kumar Kansal, Advocate
for the appellants in RSA No.2598 & 4577 of 2018.

:-

AMIT RAWAL J. (ORAL)

C.M. No.12175-C of 2018 in RSA No.4577 of 2018

For the reasons stated in the application, delay of 41 days
in re-filing of the appeal is condoned.

Application is allowed.

C.M. No.6829-C of 2018 in RSA No.2598 of 2018

For the reasons stated in the application, delay of 77 days
in re-filing of the appeal is condoned.

Application is allowed.

Main cases

Notice of motion.

Mr. Arun Jindal, Advocate accepts notice for respondents in RSA Nos.2598 and 4577 of 2018 and Mr. Ajay Kumar Kansal, Advocate accepts notice for respondents in RSA No.4859 of 017.

This order of mine shall dispose of three regular second appeals. RSA No.4859 of 2017 has been preferred on behalf of the plaintiffs and RSA Nos.2598 and 4577 of 2018 on behalf of defendants.

The entire controversy revolves around the estate of Chhajju, who had opportunity to marry twice and bore nine daughters. Plaintiffs No.1 to 3 are daughters from the first wife namely Siriya and out of second marriage with Bhateri Devi, defendant No.1, six daughters were born, in all nine. Chhajju, admittedly, died on 06.05.1990 and before death executed a registered Will dated 11.08.1989 bequeathing his entire property measuring 65 kanals 2 marlas in favour of Bhateri. As per the assertion in the plaint, vide sale deed dated 27.11.2006, Bhateri sold 2 ½ acres and 33 kanals to defendant No.2, therefore, cause of action accrued to file the suit in 2007.

Defendant No.1 opposed the suit by propounding the Will and stated that mutation qua inheritance of Chhajju on the basis of the Will was effected long time back and during this period, there was sale of 10 kanals 2 marlas way back in 2000, which was never challenged. It was registered document, duly attested by Lambardar and scribed by the regular deed writer.

Defendant No.2 opposed the suit by taking the plea of bona fide purchaser under Section 41 of the Transfer of Property Act

as before purchase, Batheri was found to be recorded in the revenue record as owner.

Since parties were at variance, the trial Court framed the following issues:-

“1. Whether the plaintiffs are owners as per the shares detailed in head note of the plaint?OPP

2. Whether the registered Will No.50 dated 11.08.1989 allegedly executed by Chajju son of Neki is null and void and is result of forgery and impersonation and is liable to be set aside as prayed for?OPP

3. Whether the mutation No.634 dated 05.07.1990 based upon the said will is also liable to be set aside? OPP

4. Whether the registered sale deed No.3520 dated 27.11.2006 is also null and void and does not convey and title to defendant No.2 if so whether mutation No.1224 dated 08.12.2006 is also liable to be set aside and the revenue record corrected accordingly?OPP

5. Whether the plaintiffs are entitled to get the suit land detailed in head note? OPP

6. Whether the plaintiffs are entitled to permanent injunction as prayed for?OPP

7. Whether the suit is not maintainable in the present form? OPD

8. Whether the less court fee has been fixed from the plaintiff if so its effect? OPD

9. Whether the suit of the plaintiffs have no locus standi and cause of action of file the present suit? OPD

10. Whether the suit is beyond limitation?OPD

11. Whether the plaintiffs are guilty of suppression of true and material facts from the court?OPD

12. Whether the defendant is owner in possession of entire suit land by virtue of will No.50 dated 11.08.1989? OPD

13. Relief.”

It may not be out of place to mention here that plaintiffs sought claim in the property with regard to 56 kanals 16 marlas and not of 10 kanals 2 marlas subject matter of the sale deed dated of 2000.

Mr. Arun Jindal and Mr. Arihant Jain, learned counsel appearing for the appellants-plaintiffs submitted that onus is always upon the propounder of the Will, which remained undischarged as the original Will has not seen light of the day. It was only in the application for secondary evidence that certified copy came on record. Relationship between the parties i.e. plaintiffs No.1 to 3 being daughters of Chhajju was not denied. The trial Court granted the relief by granting declaration qua 1/10th share but did not set aside the sale deed impugned. The other defendants propounded the Will, , therefore, any act done on the basis of the Will was protected. The trial Court partly decreed the suit by accepting the Will qua the persons, who admitted the same. However, two appeals were filed but appeal of the plaintiffs was dismissed by discarding the Will but the sale deed dated 27.11.2006 remained in tact. It is, in these circumstances, cause of action accrued to file the appeal before this Court.

Mr. Kansal, learned counsel appearing on behalf of the appellants in RSA No.2598 and 4577 of 2018 submitted that onus to prove the Will was on the plaintiffs. They failed to discharge the onus as they challenged the Will in affirmative. No evidence to that effect has been led. Since relinquishment of share with regard to 10 kanals of land in respect of sale deed effected in 2000 cannot be a

ground to stake claim in 2007, thus, the suit was barred by law of limitation, as the mutation of inheritance immediately on the death of Chhajju was effected in favour of the beneficiaries of the Will i.e. defendant No.1. Lambardar appeared in the witness box and stated that he had seen the original Will and attested the same. There was an indirect admission of execution of Will by the plaintiffs but the Courts below abdicated in not referring to the pleadings.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is some force and merit in the submissions of Mr. Arun Jindal, for, the lower Appellate Court discarded the Will on the following counts:-

(i) The original Will did not see light of the day nor any handwriting expert had been examined to prove thumb impression of Chhajju. The certified copy came on record in the absence of any application for secondary evidence. However, the sale deed, as noticed above, has been kept in tact benefitting defendant No.2 as per provisions of Section 41 of the Transfer of Property Act.

(ii) In view of the facts explained above, the defence of defendant No.2 was justified as on the date when verified title, it was reflected in the name of Bhateri.

Sale deed in such circumstances cannot be void.

The lower Appellate Court remained oblivious of the fact that the sale was beyond the share of Bhateri i.e. beyond 1/10th share of 56 kanals 16 marlas. The interest of defendant No.2 could have been protected in terms of money. It is matter of record that Bhateri

is still alive. Therefore, other defendants i.e. defendant No.3 onwards cannot be burdened to compensate during her life time. The finding of the Courts below in rejecting the Will is perfectly legal and justified, much less, parentage of the children i.e. plaintiffs. It is settled law that child born out of the first marriage has right to inherit the share in the property and after amendment in Section 6 of the Hindu Succession Act in 2005, daughters have right by birth in the ancestral property. Defendants cannot be permitted to deny the claim of the plaintiffs in respect of land measuring 56 kanals 18 marlas taking the aid of the Limitation Act as claim qua 10 kanals 2 marlas of land vide 2000 sale deed was relinquished, which is permissible in law. Once determination of share has remained in tact and Will has been set aside, plaintiffs were required to be compensated. Accordingly, judgment of the lower Appellate Court is modified to the extent that defendant No.1 is directed to compensate defendant No.2 in terms of money regarding the shortfall of the area as she allegedly sold the excess share than the one she had.

In view of the aforementioned circumstances, judgment and decree of the lower Appellate Court is upheld with the aforementioned modification. All the appeals stand disposed of in the above terms.

(AMIT RAWAL)
JUDGE

May 02, 2019

Pankaj*

Whether speaking/reasoned

Yes

Whether reportable

No