

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No. 119

Case No. : RSA No. 6300 of 2017

Date of Decision : July 23, 2019

Smt. Shindo Devi and others Appellants

vs.

Phool Chand and others Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

* * *

Present : Mr. Mange Ram Sharma, Advocate
for the appellants.

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DEEPAK SIBAL, J. (Oral) :

Respondents no. 1 and 2 filed a suit seeking therein to be declared owners in possession of the properties detailed and described in the head note of their plaint (for short – the suit properties).

The case set up by respondents no. 1 and 2 was that Mamu Ram, who was the father of the respondents as also appellant no. 5, died on 02.08.2004. His wife Smt. Parmeshwari Devi died later on 14.01.2008. Through his first and last Will dated 22.10.1997, Mamu Ram had bequeathed the suit properties to respondents no. 1 and 2 and this had been done in lieu of services rendered by them to him and his wife Parmeshwari Devi. It was submitted that at the time of execution of the aforesaid Will, Mamu Ram was in sound disposing state of mind and as per the aforesaid Will, respondents no. 1 and 2 were owners in possession of the suit

properties.

Prior to the afore-referred suit filed by respondents no. 1 and 2, on 19.07.2005, appellants no. 1 to 4 had filed a **Civil Suit bearing No. 142/05 – Smt. Shindo Devi vs. Parmeshwari Devi** in respect of the suit properties. In that suit, respondents no. 1 and 2 and two daughters of Mamu Ram had filed a written statement and set up the aforesaid Will of Mamu Ram dated 22.10.1997. The said Civil Suit was dismissed in default on 01.02.2007.

On 19.07.2005, appellants no. 1 to 4 had filed another suit being **Civil Suit No. 165/05 – Smt. Shindo Devi vs. Parmeshwari Devi etc.** which was also in respect of the suit properties. In that suit also, respondents no. 1 and 2 and five daughters of Mamu Ram had set up the aforesaid Will of Mamu Ram dated 22.10.1997. On 05.04.2010, when the suit was ripe for arguments, appellants no. 1 to 4 withdrew the same.

Mutation with regard to suit properties was entered into by the Revenue Authorities in the name of all the heirs of Mamu Ram but it was the case of respondents no. 1 and 2 that such mutation lacked jurisdiction as the issue with regard to title on the basis of Will could have only been decided by a Civil Court. Through the instant suit, respondents no. 1 and 2 challenged the mutation in favour of all the heirs of Mamu Ram and sought themselves to be declared owners in possession of the suit properties on the basis of the aforementioned Will dated 22.10.1997 executed by their father.

On being put to notice, appellant no. 1 filed a written statement through which she contested the Will of Mamu Ram dated 22.10.1997 on

the ground that the same was shrouded with suspicious circumstances. According to appellant no. 1, the Will in question was a result of fraud and had been procured by respondents no. 1 and 2 by taking undue benefit of Mamu Ram's ill health. It was further submitted that at the time of its execution the Will had not been read over to Mamu Ram and therefore, was unsustainable. Appellant no. 1 further submitted that the suit properties were ancestral in nature and therefore, could not have been willed at all.

Appellants no. 2 to 5, through their separate written statement, adopted the stand taken by appellant no. 1.

On the dispute between the parties, the Trial Court framed issues, on which, both parties led their respective evidence. The Trial Court sifted the evidence on record and after considering the arguments raised by learned counsel appearing for the parties, decreed respondents no. 1 and 2's suit. Resultantly, the challenged mutation was set aside and respondents no. 1 and 2 were declared owners in possession of the suit properties.

The appellants challenged the aforesaid judgment and decree by way of an appeal which was dismissed by the First Appellate Court giving them a cause to institute the present second appeal.

Learned counsel for the appellants submitted that both the Trial Court as also the First Appellate Court have misread the evidence on the record to declare respondents no. 1 and 2 to be owners in possession of the suit properties. According to him, the suit properties were ancestral and therefore, could not have been willed. The Will dated 22.10.1997 of Mamu Ram, relied upon by respondents no.1 and 2 was challenged on the ground

that it completely excluded one of Mamu Ram's sons and this was a suspicious circumstance which was enough to declare the Will as null and void. It was further submitted that at the time of the execution of the Will in question, respondents no. 1 and 2 had exercised influence on Mamu Ram and on this ground alone, the same was liable to be ignored.

The above submissions have been considered but no merit is found in the same.

The issue raised by learned counsel for the appellants with regard to the suit properties being ancestral in nature is liable to be rejected solely for the reason that no evidence in that regard was produced by the appellants.

So far as the challenge to the Will in question is concerned, the execution of the same was duly proved by respondents no. 1 and 2 through the testimony of PW-3 Garib Dass – its attesting witness, PW-1 Deepak Sharma – son of its Scribe (since the Scribe had died) and PW-4 Hawa Singh Nain – Notary Public. The cross-examination of above said witnesses by the appellants could not illicit anything which would even cast a doubt with regard to the execution of the aforesaid Will. In fact, execution of the Will was admitted by appellant no. 1 herself as in her written statement, she had pleaded that at the time of its execution, the Will in question had not been read over to Mamu Ram thus admitting its execution.

With regard to Mamu Ram not being of sound disposing mind at the time of the execution of the Will, no evidence in this regard is found to have been led by the appellants.

In the light of the above, mere exclusion of one of his sons from the Will in question cannot be considered to be a suspicious circumstance to set aside the same especially when appellant no. 1 admittedly had litigation with Parmeshwari Devi wife of Mamu Ram as also in the light of the admission by DW-3 Kiran – daughter of Sher Singh (son of Mamu Ram) to the effect that her marriage was not even attended by her grandfather Mamu Ram showing lack of affection by Mamu Ram for Sher Singh who was his son.

In view of the above, no question of law much less any substantial question of law arises for consideration in the present second appeal so as to warrant interference in the concurrent findings of fact recorded by both the Courts below.

Dismissed.

(DEEPAK SIBAL)
JUDGE

July 23, 2019
monika

<i>Whether speaking/reasoned ?</i>	<i>Yes/No.</i>
<i>Whether reportable ?</i>	<i>Yes/No.</i>