

RSA No. 873 of 2018 (O&M)

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

RSA No. 873 of 2018 (O&M)

Date of decision: 16.10.2019

Des Raj

... Appellant

Versus

Jagmal Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present: Mr. Naresh Jain, Advocate,
for the appellant.

ARUN PALLI, J. (Oral)

The suit filed by the plaintiff-appellant was dismissed by the trial court, vide judgment and decree dated 1.5.2015, and as even the appeal preferred against the said decree failed and was dismissed on 20.7.2017, he 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, plaintiff and defendants No.1 and 2 happened to be real brothers whereas defendants No. 3 and 4 are the sons of deceased sister of the plaintiff, namely Smt. Jawantari Devi, daughter of Bharat Singh. The suit property measuring 13 kanals 18 marlas was owned and possessed by Smt. Chawli Devi, widow of Bharat Singh, which had devolved upon her in terms of Section 14 of the Hindu Succession Act, and was thus her self acquired property. Smt. Chawli Devi died on 6.3.2010, and vide a registered Will dated 24.12.1999, she bequeathed the suit property in favour of the plaintiff and defendants No.1 and 2 in equal shares. While the plaintiff requested defendants No.1 and 2 to get the suit property mutated in their names pursuant to the Will, but he was surprised to learn that pursuant to a

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relinquishment deed dated 3.12.2007, the property had already been mutated in the name of defendant No.1, namely Jagmal Singh, and mutation No. 893 had already been sanctioned in his name. Thus, the suit.

In defence, defendant No.1 pleaded, *inter alia*, that although Smt. Chawli Devi died on 6.3.2010, but she had not executed any Will dated 24.12.1999. In fact, Smt. Chawli Devi, during her lifetime, was residing only with defendant No.1 at village Kurak and he was looking after her, whereas, the plaintiff was residing along with her family at Chandigarh and never cared for her mother. Thus, with her free will and consent, she executed a relinquishment deed in his favour qua the suit property, whereafter the property was even mutated in his name on 12.5.2008. And, post death of Smt. Chawli Devi, even the mutation qua another piece of land, measuring 3Kanal-0Marla, comprised in khewat No. 68 situated in the revenue estate of village Kurak, was also sanctioned in favour of defendant No.1. He even propounded the Will dated 3.12.2007, whereby the deceased bequeathed the suit property in his favour.

Upon consideration of the matter in issue and the evidence on record, both the courts concurrently concluded that onus to prove Will dated 24.12.1999 was upon the plaintiff being propounder thereof, which was duly proved on record. However, the relinquishment deed dated 3.12.2007 (Ex.D2) executed by Smt. Chawli Devi during her lifetime, vide which the suit property was relinquished in favour of defendant No.1, would over-ride the Will dated 24.12.1999, for it would have come in operation only after the death of the testator. Further, the relinquishment deed dated 3.12.2007, became effective during the lifetime of Smt. Chawli Devi, for pursuant thereto, mutation No. 871 was entered by Halqa Patwari on 1.2.2008, and

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was sanctioned in his favour on 12.3.2008, while Smt. Chawli Devi was still alive. Thus, the plaintiff as also defendants No.2 to 4 had full knowledge of the relinquishment deed dated 3.12.2007. However, it was sought to be canvassed by the plaintiff that said relinquishment deed was a result of fraud, but apparently neither any such plea was set up by the plaintiff, nor any evidence was led to substantiate any such claim. The relinquishment deed bears the thumb impressions as also photographs of the deceased (Smt. Chawli Devi), and is even admitted by the plaintiff. The plea that Government of Haryana had issued some notification qua relinquishment deeds, as a result, it could be executed only with regard to ancestral property, also remained unproved for, neither any such notification was placed on record, nor any cogent evidence was led by the plaintiff in this regard. Rather, the evidence on record showed that plaintiff himself conceded in his cross-examination that he resided separately in Chandigarh for the last 35 years and Smt. Chawli Devi, an old aged person, resided in the village. Therefore, veracity of the relinquishment deed dated 3.12.2007 in favour of defendant No.1 could not be doubted. Not just that, defendant No.2, namely Suresh Singh, who happened to be the brother of plaintiff and defendant No.1, supported the claim of defendant No.1 and admitted the execution of the relinquishment deed, knowing well that in the process, he would not be entitled to any share in the suit property.

The argument advanced by learned counsel for the appellant that observation made by the appellate court that even if it was presumed that Smt. Chawli Devi was not competent to execute the relinquishment deed, still defendant No.1 would succeed, as the deceased had also executed a Will dated 3.12.2007 in his favour was erroneous, for the said Will was

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surrounded by suspicious circumstances. Ex facie, the argument lacks conviction and cannot be countenanced. For, it was while dealing with the argument that pursuant to some instructions, relinquishment deed could only be executed qua the ancestral property, the appellate court observed, ***“for the sake of the arguments if it shall be presumed that Smt. Chawli Devi was not competent to execute release deed Ex.D2 in favour of defendant No.1, then it does not affect upon the merits of the case, as simultaneously Smt. Chawli Devi has executed a registered Will dated 3.12.2007 in favour of Jagmal Singh-defendant No.1.”***

Apparently, the appellate court did not reverse the findings recorded by the trial court as regards validity and execution of the relinquishment deed dated 3.12.2007, nor made any observation qua veracity of the said document. Further, suit of the plaintiff was dismissed in the wake of the relinquishment deed dated 3.12.2007, executed by Smt. Chawli Devi in favour of defendant No.1. Upon being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the findings 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. The appeal being devoid of merit, is accordingly dismissed.

(ARUN PALLI)
JUDGE

October 16, 2019

AK Sharma

Whether speaking / reasoned:

YES

Whether Reportable:

YES/NO