

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

RSA No.1560 of 2017 (O&M)
DATE OF DECISION : 12th MARCH, 2020

Karnail Singh

.... Appellant

Versus

Lashmir Kaur @ Kashmir Kaur & others

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

* * * *

Present : Mr. Nitish Garg, Advocate for the appellant.

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RAJBIR SEHRAWAT, J. (Oral)

1. This is the second appeal filed by the unsuccessful plaintiff, challenging the concurrent judgments and decrees, passed by the courts below, whereby; his suit for declaration to the effect that the plaintiff and defendants No.8 to 12 are the owners in possession of the suit land, with consequential relief of permanent injunction restraining the contesting defendants No.1 to 7 from selling, alienating or transferring the suit land, was dismissed.

2. For the convenience, the parties are being referred to herein as the plaintiff and the defendants; as they were described in the original suit.

3. The brief facts, leading to the present appeal, are that the plaintiff had filed above said suit asserting therein that Dewa Singh, the father of the plaintiff and predecessor-in-interest of the parties to the suit, was the owner in possession of the suit property. Out of natural love and affection qua the plaintiff and defendants No.8 to 12, the deceased Dewa Singh had executed a Will dated 04.11.1976 in their favour. The said

Will is lying on the record of probate proceedings undertaken in the High Court of Fiji. The probate was duly granted by upholding the above said Will vide judgment and order dated 11.02.1981; rendered by the High Court of Fiji. After the death of Dhanti, the wife of Dewa Singh, on 12.03.1989; the entire estate of Dewa Singh has devolved upon the plaintiff and defendants No.8 to 12 equally. The defendants No.1 to 7 have managed the entry of mutation of inheritance of Estate of Dewa Singh without notice to the plaintiff or other beneficiaries of the Will. Hence, the mutation to that effect, being against the Will executed by Dewa Singh, is non est. Earlier, the wife of one of sons of Dewa Singh, namely Malkiat Singh; had filed a suit for declaration and injunction qua the suit land, however, the same was dismissed as withdrawn. Accordingly, it was asserted that the plaintiff and the defendants No.8 to 12 are the exclusive owners in possession of the estate left by Dewa Singh. The other defendants are trying to dispose of the said land and interfering in possession of the plaintiff. Therefore, the suit was instituted.

4. On notice, only defendant No.7, who is wife of the pre-deceased son of Dewa Singh, contested the suit by taking a preliminary objection that the suit of the plaintiffs was barred by Order 2 Rule 2 CPC. On merits, it was asserted that the plaintiff was not in possession of any part of the suit property. All the necessary parties have not been impleaded as party to the suit. On merits, it was asserted by the defendant No.7 that the common ancestor of the parties was Kanhaiya Singh who had five sons, including Dewa Singh. Dewa Singh had gone abroad and never returned to India during his life time. Even the exact

date of his death is not known to the parties. All the sons of Kanhaiya Singh, except Dewa Singh, having gone abroad, and similarly all the sons of Dewa Singh also having gone abroad, it was only Darshan Singh; who alone was managing the affairs of the suit property in India. Darshan Singh was being looked after and served by defendant No.7 as she was not granted visa by British Government earlier and therefore, could not join her husband Malkiat Singh abroad. Darshan Singh had bequeathed entire estate in favour of defendant No.7 by way of registered Will. Still further it was denied that any Will was executed by Dewa Singh. The Will being set up by the plaintiff is totally forged and fabricated. Hence, the dismissal of the suit was prayed for.

5. To prove their respective assertions, the parties led their evidence. Plaintiff Karnail Singh himself appeared as PW-1 and reiterated his assertion made in the plaint. He also placed on record the alleged copy of the order dated 11.02.1981 passed by the High Court of Fiji in probate proceedings; qua the estate of Dewa Singh; to show that the estate was bequeathed in favour of the plaintiff and his brothers Pakhar Singh, Bhajan Singh and Sohan Singh. The extract from the *Jamabandi* and mutation were also placed on record to show that the property has been entered in the revenue record in favour of four sons in terms of the order of High Court of Fiji. Besides this; some other documents were also placed on record. On the other hand, the defendant No.7 herself appeared as witness as DW-1. Besides this, the copy of the judgment dated 10.09.2012 was tendered as Exhibit D-1 and decree sheet of the same date was exhibited as Exhibit D-2, vide which the earlier suit filed by the present plaintiff was dismissed.

6. Having appreciated the respective evidence, the trial court dismissed the suit filed by the plaintiff. Feeling aggrieved against the same the plaintiff had preferred appeal before the lower appellate court. Even the same was dismissed by the lower appellate Court.

7. While arguing the case the learned counsel for the appellant has submitted that photocopy of the probate order passed by the High Court of Fiji has been placed on record, which is binding in nature as a judgment of the foreign court. Therefore, both the courts below have gone wrong in not believing the Will as such. The judgment passed by the High Court of Fiji in probate proceedings is a judgment in rem and therefore, it would be binding even in India qua the dispute involving the said Will. Still further, qua the earlier suit, which was filed by the plaintiff and which was dismissed by the Court, it is submitted that at that time the plaintiff could not produce the certified copy of the order passed by the High Court of Fiji, therefore, the earlier suit was dismissed. However in the present suit certified copy of the said order has been placed on record. Hence, the Will shall have to be taken as duly upheld in favour of the plaintiff and thus binding upon defendants.

8. Having heard learned counsel for the plaintiff and having perused the case file, this court does not find any substance in the argument raised by the counsel for the appellant. It is worth noting that while dealing with the case, the courts below have dealt with Section 13 of the Code of Civil Procedure which relates to the foreign judgments. The lower appellate court has recorded that although this Section makes the foreign judgment as binding, however, there are certain exceptions to it. Since there is nothing in the judgment passed by the High Court of

Fiji to suggest that the Will has been proved in accordance with law as applicable in India, therefore, the said judgment being not in conformity with the law, as applicable in India, cannot be held to be binding upon the courts in India. For the ready reference, it is apposite to have reference to Section 13 CPC, which is reproduced hereunder:

13. When foreign judgment not conclusive.- A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except.-

- (a) where it has not been pronounced by a Court of competent jurisdiction;
- (b) where it has not been given on the merits of the case;
- (c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognize the law of India in cases in which such law is applicable;
- (d) where the proceedings in which the judgment was obtained are opposed to natural justice;
- (e) where it has been obtained by fraud;
- (j) where it sustains a claim founded on a breach of any law in force in India.

9. A bare perusal of the Section itself shows that the foreign judgment is declared to be conclusive qua the matter involved therein. However, it is binding upon the same parties which were before the foreign court or which may be claiming under them. First of all; there is nothing on record to suggest that all the defendants were parties before the High Court of Fiji. Hence this judgment per se cannot be held to be

binding qua defendant No.7, who is not shown to be a party before that court. Still further, it is obvious that Section 63 of India Succession Act prescribes statutory requirements of a valid Will. Even as per the Sections 68 and 69 of the Evidence Act a specific and special procedure has been prescribed for proof of the document of Will. Hence, for claiming a Will, as per the Indian Law, the propounder of the Will is required to produce at least one attesting witness to prove the requirements prescribed under Section 63 of Indian Succession Act qua execution of the valid Will. Unless the requirements of Section 63 are proved in accordance with a law; which has to be at par with Section 68 and 69 of the Indian Evidence Act; neither the Will can be said to have been executed in accordance with law nor can the same be taken as having been proved in accordance with the procedure, as prescribed by law in India. However, the judgment passed by the High Court of Fiji does not even show that any positive evidence was led to prove the execution of the Will qua the requirements of Section 63 of the India Succession Act, much less to speak of any evidence being led as per requirement of Section 68 and 69 of the Indian Evidence Act. Hence, the said judgment cannot be binding upon courts in India because of the same being in breach and in non-recognition of law in force in India; as contemplated under Clauses (c) and (f) of Section 13 of the Code of Civil Procedure. Otherwise also, although the plaintiff claimed the copy produced before the trial courts to be a certified copy of the judgment of the High Court of Fiji, however, even the said certification has not been proved in accordance with law. Therefore, there is nothing on record that the copy, which is claimed to be certified copy of the judgment, is at all

the certified copy of the said judgment or not. Hence the same cannot be simply taken into account by the courts.

10. Another aspect which has rightly been taken into consideration by the courts below is that earlier also the plaintiff himself had filed the suit seeking injunction. In that suit as well, the question of Will was pleaded by the plaintiff himself. However, no evidence was led by him to prove the Will, as such. Accordingly, the said suit was also dismissed. Therefore, the present suit is even barred qua validity of the Will, which already stands adjudicated in the previous suit. So far as the proof of the Will in the present case is concerned, needless to say that the plaintiff has not examined any witness, even to remotely suggest the execution of the Will by the deceased-Dewa Singh. Hence, this court does not find any illegality of perversity in the findings recorded by the courts below. Otherwise also; the findings which are being challenged by the plaintiff in the present appeal; are the concurrent finding of the facts; which do not call for any interference by this court.

11. No other argument was raised. No substantial question of law has been pointed out by the counsel for the appellant.

12. In view of the above, finding no merit in the present appeal, the same is dismissed.

12th MARCH, 2020
‘raj’

(RAJBIR SEHRAWAT)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>