

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-154-2021 (O&M)

Reserved on: 19.03.2021

Pronounced on: 08.04.2021

Maya Ram

....Appellant

Versus

Kesho Devi & others

....Respondents

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr.Y.S.Turka, Advocate, for the appellant.

(The proceedings are being conducted through video conferencing,
as per instructions.)

G.S. SANDHAWALIA, J.

The present regular second appeal has been filed by the unsuccessful plaintiff-appellant challenging the dismissal of his suit by the Civil Judge (Jr.Division), Ambala on 30.11.2017, which judgment has been upheld by the Addl.District Judge on 11.12.2019.

Counsel for the appellant has vehemently submitted that the Will dated 27.09.2004 was not duly proved by the defendant-respondents and they having propounded the same were under an obligation to prove the same, as per the provisions of the Indian Succession Act and Section 68 of the Evidence Act. It is, thus, submitted that the suit was wrongly dismissed since there was no issue framed on the validity of the Will.

A perusal of the paperbook would go on to show that the suit was filed for declaration by the plaintiff-appellant who is the son of the testator-Nanak Ram who claimed to be the owner of 1/4th share of the land described in the heading of the plaint. Resultantly, the Will which was got registered in the office of the Sub-Registrar, Mullana by the deceased-

Nanak Ram who had expired on 23.01.2015, was challenged on the ground that he had not executed the same during his life-time. Resultantly, the plaintiff alleged that he was a coparcener in the family and had a vested right and sought the benefits of succession qua his step-mother, 2 brothers and sister. It was alleged that the first wife of Nanak Ram, Smt. Bakhtauri was never divorced and was still alive and living in some village of Punjab and Nanak Ram had never executed the Will.

The suit was contested on the ground that it was a self-acquired property of the deceased and he purchased the suit property out of his own earnings and therefore he was fully competent to transfer the same in favour of any person. The plaintiff never served the father during his life-time and was residing separately and therefore, the Will had been made in favour of the defendants. After the death of Nanak Ram on 23.01.2015, mutation bearing No.2523 had also been sanctioned on 12.03.2015 and thus, it was noticed that the suit was filed on 10.03.2015 and the Will was stated to be scribed by an Advocate on the asking of Nanak Ram in the presence of witnesses. Thereafter, Nanak Ram had also put his thumb impression thereon and had appeared before the Sub-Registrar. It has been noticed by the Trial Court that in cross-examination, it has been admitted by the plaintiff that he had no document that his grandfather had property in village Dhanaura. Similarly, he had got married about 30-35 years ago and had never supported his father. One of the witnesses to the Will, Bengali Ram was examined as DW-1 who specifically deposed that the testator had put his

thumb impression upon the Will and the other witness, Balbir, the Lamberdar had also signed the Will which was got scribed out of his free will which he also heard. Relevant part of the said statement, as reproduced in the grounds of appeal, reads as under:

“I do not know whether Advocate signed or not. I, Nanak put his thumb impression then Balbir signed, then I put my thumb impression. Advocate read over the Will which I heard. Balbir also came with me. Nanak was also with us. Wife of Nanak Ram was not present. (At this time, Kesho Devi wife of Nanak Ram, come present in the court and stated that I was also present at the time of execution of Will.). I cannot identify my thumb impression on the Will Ex.D1. I cannot tell which thumb impression is of Nanak Ram.”

Thus, it is apparent that the Will has been proved by examining one of the attesting witnesses. It has also been averred by the said witness that the plaintiff had not served his father and he used to stay separately. Similarly, the registration of the Will was proved by examining Mohammad Rasid as DW-2 from the office of Sub-Registrar.

The scribe-DW-5, Ram Kumar, who is an Advocate, was also examined who had typed the Will and stated that the same had been thumb marked by the testator after understanding the contents which had been read over to him. After seeing the original Will, he identified the signatures on the Will (Ex.D-1). In such circumstances, the argument raised by counsel for the plaintiff-appellant that the execution of the Will had not been proved, is without any basis. Not only one of the attesting witnesses but even the scribe of the Will had been produced and they had deposed regarding the execution of the Will. The thumb marking on the

same by the testator had been seen by the witness and also the fact that the other witness had signed in front of him. The sale deed dated 30.07.1976 (Ex.D-3) was produced whereby the property had been purchased by Nanak Ram to prove that it was not ancestral and therefore the testator had every right to give away the property by virtue of the Will to Kesho Devi and the children she had sired. The Supreme Court in **P.S.Sairam & another Vs. P.S.Rama Roy Pisey & others (2004) 11 SCC 320**, held that by examining one attesting witness, the Will could be proved and there was no need to examine the other two witnesses. It was further held that a Will being executed in favour of the second wife and children and by excluding the son from the earlier marriage was not unnatural. The relevant part reads as under:

“13. So far as the other ground is concerned, it was stated by DW.3 that on being called by the testator, he went with him to the office of lawyer along with the other two witnesses, namely, Vittal Rao and Rajanna, and there, in his presence and in the presence of other attesting witnesses, contents of the Will were not only read over to the testator, but he himself also had gone through its contents. He further stated that the testator was keeping good health and was mentally sound. The witness then stated that the testator put his LTMs on each and every page of the Will in his presence which were marked as Exts. D.13(a) to D.13(j) and he attested the same and put his signature on the Will which was marked as Ext. D.13(k). He thereafter stated that other two attesting witnesses also put their signatures on the Will and he identified them which were marked as Exts. D.13(l) and D.13(m). DW.3 lastly stated that he was instructed to go to the Sub-Registrar's office two days after the execution of the Will

where he presented himself before the Sub-Registrar and there in his presence the testator put his LTM, which was marked as Ext. D.13(n), and he attested the same and his signature was marked as Ext. D.13(p). In our view, there is no infirmity in the evidence of this witness and the courts below were not justified in drawing an inference against the defendants for not examining the other two attesting witnesses. In the case on hand, neither the LTMs of the testator on the Will have been denied nor any case has been made out or evidence led to the effect that LTMs of the testator were taken on blank papers and same were converted into Will. As the plaintiff had filed a suit for partition against his father, who was the testator, there was nothing unnatural in the testator bequeathing item no. 3 property to his second wife, defendant no. 1(e), creating life estate in her favour and thereafter to her son, defendant no. 2. It may be stated that in the Will it has been recited that the testator had already purchased a house in the name of his first wife where his children from her, including the plaintiff, were residing and he gave the said house to his four daughters from the first wife. This shows that conduct of the testator in bequeathing item no. 3 property under the Will in favour of his second wife and his son from her cannot be said to be unnatural. In view of the foregoing discussion, we hold that the defendants succeeded in proving that Sadasiva Rao duly executed the Will in question and, consequently, the plaintiff shall not be entitled to claim any share in the property described as item no. 3 in the Schedule.”

The Courts below have, thus, examined the case in its proper perspective and the Appellate Court had rightly concluded that the onus was upon the plaintiff to get the issues framed rightly if he was wanting to set up the plea that the onus of the Will should have been upon the propounder. The fact that the Will was registered on 27.09.2004 is

another aspect which is to be kept into consideration since Nanak Ram died more than a decade later on 23.01.2015 which further goes on to prove the fact that on account of his relationship with the respondent No.1, he had executed the Will. The admission of the plaintiff that he was residing separately for the last 35 years after his marriage would be reason enough for the testator to keep him out of the zone of succession. The said findings which have been recorded by the Courts below are totally factual in nature and no substantial question of law thus arises for consideration of this Court.

Resultantly, keeping in view the above discussion, this Court is of the opinion that there is no merit in the present regular second appeal and the same is, accordingly, dismissed in limine.

08.04.2021
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No