

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA No.1520 of 1994 (O&M)
Reserved on : 01.12.2022
Date of Decision : 06.12.2022

Narinder MohanAppellant

VERSUS

Smt.Uma DeviRespondent

CORAM: HON’BLE MRS. JUSTICE ALKA SARIN

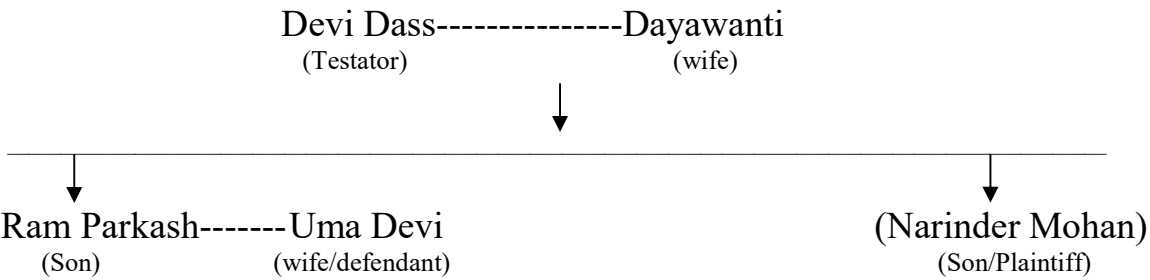
Present: Mr. Akshay Bhan, Sr. Advocate with
Mr. Santosh Sharma, Advocate for the appellant.

Mr. Prateek Gupta, Advocate for the respondent.

ALKA SARIN, J. (Oral)

The present regular second appeal has been preferred against the judgments and decrees dated 30.07.1988 and 18.01.1994 dismissing the suit filed by the plaintiff-appellant for declaration and mandatory injunction as well as for permanent injunction.

The brief facts relevant to the present *lis* are that the property in dispute was originally owned by one Devi Dass. The pedigree table reproduced below depicts the relationship between the parties :



During his life time Devi Dass executed a Will dated 23.01.1957 (Ex.P1). The said Will was in Urdu, however, English

translation of the same has been reproduced in para 12 of the judgment of the lower Appellate Court and it reads as under :

“I, Shri Devi Dass son of Shri Sunder Dass son of Pt. Nathu Ram are resident of Mohalla Sukhram Nagar, aged 58 years. I am now 58 years old and old age is fast approaching. But I am in my full senses and doing my business perfectly well. But life is short lived and we cannot trust life. I am the sole owner of moveable and immoveable property House No.B-XIII-661-665 situated in Ludhiana Karimpura and Sukhram Nagar, which are myself acquired and constructed properties. House No.B-XIII-665 was purchased by me through sale deed dated 14th August, 45. The vacant plot of House No.B-XIII-661 was purchased from Sardar Bishan Singh etc. and I have constructed the same by spending from my own resources. I am having issues. My two sons Ram Parkash and Narinder Mohan alive and my wife is Daya Wanti. Because I have acquired the properties with hard work and prudence I do not wish that after my death anybody may transfer any property in any manner and waste away the same. Because ceremonial obligation in respect of my daughters are required to be fulfilled and my wife has also to maintain herself during life, this can be done only by the income of property. Though, I have no differences with my sons, rather they are obedient, even then, by virtue of my prudence/I bequeath my

property and two houses and house-hold goods, cash and bank and post office accounts etc. whatsoever is left by me, at the time of death in the name of my wife Smt. Dayawanti. After my death my wife shall be my rightful heir. But she will have no right to transfer. She can take benefit by continuing in possession from generation to generation. In the event of my wife dying during my life time then my entire property shall be inherited to as owners by my sons Ram Parkash and Narinder Mohan in equal shares. But my sons will also have no right to transfer without mutual consent and without legal necessity. Rather they shall be entitled to enjoyment by remaining in possession from generations to generations. After my death my sons shall be duty-bound to live with mutual love and look to each others welfare and they should discharge their ceremonial obligation towards their sisters dutifully. If any one out of my sons dies before the other or dies issueless, then the other son shall be my heir. If he wants to adopt, he shall not be entitled to adopt any child other than that of my son or daughter. Till my life, I and myself the owner and I can do whatsoever I like to do. The Will will be acted upon after my death, because I have created the property with great labour and prudence. Nobody has any objection in this action of mine, nor will it be the future. This is my first Will. I have not executed any Will in favour of

anybody prior to this. I can at any time in my life cancel or change this. I have written this Will to serve as proof.

Dated 23rd Jan. 1957.”

A perusal of the above reproduced contents of the Will reveal that three situations were contemplated in the Will. Firstly, incase the testator predeceased his wife then in that circumstance the property was to devolve on his wife, Dayawanti, who was given a life estate. The second eventuality was that in case the wife predeceases the testator then the property would be inherited by the two sons, Ram Parkash and Narinder Mohan, in equal shares. The third eventuality contemplated in the Will was that in case one of the sons dies issueless then in that scenario the other son would inherit the entire estate.

Devi Dass died in the year 1975 and on his death the entire property was inherited by his wife, Dayawanti, who thereafter died in the year 1976. There is no dispute that Dayawanti during her life time did not sell or alienate the property in any manner. On the death of Dayawanti, the property was inherited by her two sons, Ram Parkash and Narinder Mohan, in equal shares and thereafter both Ram Parkash and Narinder Mohan became absolute owners of the property inherited by them from their father on the basis of the Will dated 23.01.1957. Ram Parkash died in the year 1982.

In 1983 the present suit was filed for mandatory injunction and permanent injunction by Narinder Mohan to the effect that he was owner of the property House No.B-XIII-665, Mohalla Sukhram Nagar, Ludhiana, boundaries of which are described in the plaint and for directing the defendants to vacate the property. The case set up by the plaintiff-appellant

was that as per the Will dated 23.01.1957 executed by Devi Dass, in case one of the sons dies then the other son was to inherit the property. That being so the defendant, Uma Devi, who was the wife of Ram Parkash, has no right, title or interest in the suit property.

The Trial Court on the basis of the pleadings of the parties and evidence on the record dismissed the suit. Aggrieved by the said judgment and decree, an appeal was preferred which also came to be dismissed vide judgment and decree dated 18.01.1994. Hence, the present regular second appeal.

During the pendency of the present appeal, Uma Devi died in the year 2000. CM-2493-C-2000 was filed by LRs of Uma Devi, being the brother and nephew, respectively. Vide order dated 24.04.2000 the application was allowed and Rattan Lal and Anil Kumar Kaushal were impleaded as parties. Thereafter, both Rattan Lal and Anil Kumar Kaushal died and CM-696-C-2001 was filed by LRs of Rattan Lal and Anil Kumar Kaushal. The said application was contested and vide order dated 26.03.2001 a report was called for from the Trial Court on the validity of the Will dated 23.02.2000 executed by Uma Devi in favour of her brother and nephew. The Trial Court gave its report dated 03.10.2002 holding that the propounder had failed to prove the Will of Uma Devi. The defendant-respondent herein filed objections to the said report dated 03.10.2002. Thereafter, vide order dated 07.07.2003, the application for impleading the LRs of Uma Devi was directed to be heard with the main case.

A Full Bench of this Court in case of **Mohinder Kaur & Anr. vs. Para Singh & Ors. [AIR 1981 Punjab 130]** while answering the reference to the question of law “*Whether, in no case, a decision under*

Order 22, Rule 5, Civil Procedure Code, would operate as res judicata between the same parties or their successors-in-interest or their privies in subsequent proceedings even when the contested issue in the earlier proceedings had been decided by the Court on merits after affording fair and due opportunity to the contesting parties to lead evidence and of hearing?” held as under :

“5. So far as the first argument of Mr. Bindra noticed above is concerned, we find that in addition to the judgment of the Lahore High Court and of this Court, referred to in the earlier part of this judgment. he is supported by a string of judgment of other High Court as well wherein it has repeatedly been held on varied reasons, that, a decision under Order 22, Rule 5, Civil Procedure Code, would not operate as res judicata in a subsequent suit between the same parties or persons claiming through them wherein the question of succession or heirship to the deceased party in the earlier proceedings is directly raised. Some of these reasons are as follows :

(i) Such a decision is not on an issue arising in the suit itself but is really a matter collateral to the suit and has to be decided before the suit itself can be proceeded with. The decision does not lead to the determination of any issue in the suit.

(ii) The legal representative is appointed for orderly conduct of the suit only. Such a decision

could not take away, for all times to come, the right of a rightful heir of the deceased in all matters.

(iii) The decision is the result of a summary enquiry against which no appeal has been provided for.

(iv) The concepts of legal representative and heirship of a deceased party are entirely different. In order to constitute one as a legal representative, it is unnecessary that he should have a beneficial interest in the estate. The executors and administrators are legal representatives though they may have no beneficial interest. Trespasser into the property of the deceased claiming title in himself independently of the deceased will not be a legal representative. On the other hand the heirs on whom beneficial interest devolved under the law whether statute or other governing the parties, will be legal representatives.”

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9. *We are, therefore, of the opinion that in essence a decision under Order 22, Rule 5, Civil Procedure Code, is only directed to answers an orderly conduct of the proceedings with a view to avoid the delay in the final decision of the suit till the persons claiming to be the representatives of the deceased party get the question of succession settled through a different suit and such a*

decision does not put an end to the litigation in that regard. It also does not determine any of the issues in controversy in the suit. Besides this it is obvious that such a proceeding is of a very summary nature against the result of which no appeal is provided for. The grant of an opportunity to lead some sort of evidence in support of the claim of being a legal representative of the deceased party would not in any manner change the nature of the proceeding. In the instant case the brevity of the order (reproduced above) with which the report submitted by the trial Court after enquiry into the matter was accepted, is a clear pointer to the fact that the proceedings resorted to were treated to be of a very summary nature. It is thus manifest that the Civil Procedure Code proceeds upon the view of not imparting any finality to the determination of the question of succession or heirship of the deceased party.

10. In view of the above discussion we are clearly of the opinion that the answer to the above referred to question stated in the opening part of the judgment has to be in the affirmative and we accordingly hold that in no case a decision under Order 22, Rule 5, Civil Procedure Code, would operate as res judicata between the same parties or their successor in interest or their privies, in a subsequent proceeding even when the said parties had been provided an opportunity to contest the

issue and lead the evidence thereon. With this answer to the question posed, we send back the case to the learned single Judge for decision on merits.”

The law laid down by the Full Bench of this Court is very clear that any enquiry ordered under Order XXII Rule 5 CPC is summary in nature and, therefore, no appeal is provided for. The impleadment of the parties would only be for the purposes of pursuing the appeal and the validity of the Will cannot be gone into in the present proceedings. Though, a detailed order dated 03.10.2002 has been passed by the Trial Court while holding the enquiry, however, the same cannot be looked into for ascertaining the validity of the Will inasmuch as neither was there any suit challenging the Will nor are there any pleadings to that effect. In the absence of both, the enquiry conducted by the Trial Court can be treated only for the purposes of Order XXII Rule 5 CPC.

Learned counsel for the plaintiff-appellant has not been able to show any law to the contrary. In view of the law laid down by the Full Bench of this Court in the case of **Mohinder Kaur** (*supra*), the application (CM-696-C-2001) is allowed. The LRs are impleaded as parties. However, it is made clear that impleadment is only for the purposes of pursuing the present appeal and no right accrues in favour of the LRs on the basis of the said impleadment.

The question of validity of the Will as well as succession of the property of Uma Devi is left open for the parties to get the same adjudicated in appropriate proceedings.

On Merits

Learned Senior counsel appearing on behalf of the plaintiff-appellant has contended that as per Will dated 23.01.1957 (Ex.P1), the third scenario contemplated in the Will that in the eventuality that one of the sons dies then the suit property would devolve upon the other son has to be honoured and Narinder Mohan (plaintiff-appellant herein) would become the rightful owner. It is further the contention that Uma Devi would have no right, title or interest in the suit property in terms of the Will dated 23.01.1957. In support of his arguments, learned Senior counsel has relied upon the judgment of the Hon'ble Supreme Court in case of **Navneet Lal alias Rangi vs. Gokul & Ors. [1976 (1) SCC 630]** to contend that the intention of the testator needs to be seen.

Per contra learned counsel for the defendant-respondent has contended that the third scenario where it was contemplated in the Will that in case of the death of one of the sons the property would devolve upon the other, did not arise in the present case inasmuch as in 1976 on the death of Dayawanti both the sons were alive. The property devolved on both the sons in equal proportions in 1976. From 1976 to 1982, Ram Parkash was the rightful owner of his share of the property which he got from his father in terms of the Will dated 23.01.1957 (Ex.P1). After his death in 1982, the property rightfully devolved upon his wife and once the property devolved upon Uma Devi as per Section 14(1) of the Hindu Succession Act, she became the absolute owner of the property and hence, there was no question of the plaintiff-appellant claiming any right over the suit property.

I have heard learned counsel for the parties.

In the present case vide the Will dated 23.01.1957 (Ex.P1) the testator contemplated three different situations and enumerated as to the manner in which the suit property would devolve in the three different situations. The first situation being that on his death the suit property would devolve upon his wife who shall be the rightful owner of the property. However, she would have no right to transfer but could take benefit by continuing in possession. The second situation contemplated was that in the event of the wife predeceasing the testator the suit property would devolve upon the two sons, Ram Parkash and Narinder Mohan, in equal shares. The third situation contemplated was that in case one of the sons dies before the other or dies issueless then the other son would inherit the suit property. Devi Dass died in the year 1975 and thereafter, undisputedly, his wife became owner of the suit property. She did not alienate the suit property and upon her death in 1976 the property devolved upon Ram Parkash and Narinder Mohan, the two sons of Devi Dass. They continued to be owners in possession of their respective shares as absolute owners. In the year 1982, Ram Parkash died and Uma Devi, his wife being the only Class 1 heir, inherited the suit property of her husband.

The case as set up by learned counsel for the plaintiff-appellant is that it was contemplated by the testator that in case one of his sons dies before the other or dies issueless then the other son shall be the heir. On the death of Dayawanti in the year 1976, both the sons were alive and inherited the suit property of their father in equal shares. They became absolute owners of the property which fell to their shares. Upon the death of Ram Parkash, the property of which he became absolute owner, rightfully devolved upon his wife Uma Devi being the Class 1 heir. The argument of

learned counsel for the plaintiff-appellant that the intent of the testator needs to be seen and the moment Ram Parkash died, as per the Will (Ex.P1) the property would automatically devolve upon the plaintiff-appellant (Narinder Mohan) cannot be accepted. It may have been a different scenario had at the time of death of Devi Dass or even at the time of death of Dayawanti one of the sons was dead then the other son would have got the property as per the Will. But once the property devolved upon Ram Parkash and Narinder Mohan in equal shares in 1976 and they became absolute owners of the same, the same would devolve upon their death as per the provisions of law i.e. either by testamentary succession or as per the law laid down in the Hindu Succession Act, 1956. Learned counsel for the plaintiff-appellant has not been able to show any law that once a person has inherited the property and becomes the absolute owner of the same, on his death the property would devolve not as per the provisions of the Hindu Succession Act, 1956 but as per what is contemplated in the Will executed by the original owner. Learned counsel for the plaintiff-appellant cannot take benefit of the judgment referred by him in case of **Navneet Lal @ Rangi** (*supra*) that the intention of the testator will have to be seen at the time when the property devolves upon his heirs. There cannot be any quarrel with the proposition. However, in the present case as per the second situation contemplated, the suit property devolved upon both the sons post the death of Dayawanti. Once the property devolved upon them, they became absolute owner of the same in equal shares and thereafter the devolution of the property would be governed by the provisions of the Hindu Succession Act, 1956.

No other argument has been raised by learned counsel for the plaintiff-appellant.

As per the law laid down by a Constitution Bench of the Hon'ble Supreme Court in case of **Pankajakshi (dead) through LR's & Ors. vs. Chandrika & Ors. [2016 (6) SCC 157]** there is no requirement for framing of substantial questions of law.

In view of the above, I do not find any illegality or infirmity in the judgments and decrees passed by both the Courts below. No question of law, much less any substantial question of law, arises for determination in the present case. The present regular second appeal is accordingly dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

06.12.2022
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(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO