

RSA-4889-2011 (O&M)

Reserved on : July 13, 2022

Pronounced on : July 15, 2022

.....Appellant

Vs.

...Respondents

Present: Mr. Vijay Sharma, Advocate
for the appellant.

Mr. Prashant Bansal, Advocate
for respondent Nos.1 to 4 and 6 to 27.

ARVIND SINGH SANGWAN, J.

Prayer in this appeal is for setting aside the judgments and decree passed by both the Courts below dismissing the suit filed by the plaintiff-appellant praying for a decree of declaration that the plaintiff/appellant, being widow and daughters of Shamsher Singh (pre-deceased son) are entitled to inherent of 1/3rd share in the estate of Kishan Chand, father of Shamsher Singh and defendant No.1 and grand-father of defendant Nos. 2 and 3.

The lower Court record has been requisitioned.

The case as set up in the plaint is that Kishan Chand has three sons, namely, Jeet Ram, Jagir Singh and Shamsheer Singh, who pre-deceased leaving behind the plaintiff to be widow and daughters as

his only legal heirs. Kishan Chand died on 28.10.1979 leaving behind defendant No.1-Jagir Singh and father of defendant Nos.2 and 3 Jeet Ram (sons).

It is further submitted in the suit that on the basis of an unregistered Will dated 4.10.1979, mutation No.404 dated 7.4.1981 was wrongly and illegally sanctioned in the name of defendant No.1 to the extent of $\frac{2}{3}$ rd share and in favour of Jeet Ram to the extent of $\frac{1}{3}$ rd share by ignoring the plaintiffs.

In the plaint, the Will is challenged on the following grounds:-

"3. That the defendant No.1 and his brother Jeet Ram taking undue advantage of the minority of the plaintiffs No.2 to 4 got the mutation of estate of Kishan Chand sanctioned on the basis of alleged oral Will dated 4.10.1979. The mutation No.404 dated 7.4.1981 was wrongly and illegally sanctioned in the name of defendant No.1 to the extent of $\frac{2}{3}$ rd share and Jeet Ram to the extent of $\frac{1}{3}$ rd share on the basis of alleged oral will of 4.10.1979. The alleged oral Will dated 4.10.1979 is a waste paper fabricated by the defendant No.1 and Jeet Ram in order to grab the rights and interest of the plaintiffs in the estate of Kishan Chand to the extent of $\frac{1}{3}$ rd share (being heirs of predeceased son Shamsher Singh). So the said mutation No.404 is illegal and liable to be ignored qua the rights of the plaintiffs in the estate left behind by Kishan Chand.

4. That Jeet Ram has also died about 15 years back and he is succeeded by defendants No.2 and 3 who are his sons.

5. That as Kishan Chand died intestate without executing any Will so the plaintiffs are co-owners to the extent of 1/3rd share in the estate left behind by Kishan Chand being heirs of predeceased son Shamsher Singh. The alleged oral Will is a bogus and fabricated document after the death of Kishan Chand."

The respondent-defendant contested the suit on the ground that Kishan Chand during his life time executed a Will dated 4.10.1979 which was scribed by the Deed-Writer and attested by the witnesses. It is further stated that mutation No.404 was duly sanctioned by the revenue authorities on the basis of the said Will and the suit is barred by limitation. It is also submitted that two acres of land was sold at the time of marriage of plaintiff Nos.3 and 4 and, therefore, they have no right or title over the suit property.

Defendant No.4 to 7 also contested the suit on the ground that they have purchased a part of the land after the mutation was sanctioned in favour of defendant Nos.1 to 3.

The trial Court framed the following issues :-

- "1. Whether plaintiffs are owners to the extent of 1/3rd share in the estate of Kishan Chand deceased? OPP
2. Whether the suit is not maintainable in the present form? OPD.

3. Whether suit is barred by limitation ? OPD
4. Whether Kishan Chand during his life time executed a Will dated 4.10.1979. If so, its effect? OPD.
5. Whether plaintiffs are entitled for declaration and joint possession as prayed for? OPP
6. Relief.:"

The plaintiff/appellant led their evidence and plaintiff Labh Kaur appeared as PW1 and closed their evidence.

The defendants examined Amar Singh as DW1, Budh Ram as DW2, defendant Pritam Ram himself appeared as DW3. One Dharam Singh was examined as DW4 and defendant Jagir Singh himself appeared as DW5.

The plaintiff while appearing as PW1 reiterated the case as set up in the plaint and stated that the Will dated 4.10.1979 is a fabricated document by Jagir Singh and Jeet Ram to oust the interest of the plaintiffs.

In order to prove the Will, the defendants examined Amar Singh DW1 to prove the execution of the Will Ex.DW1/A. In cross-examination this witness denied that the Will is a forged and fabricated document. Budh Ram, Deed Writer appeared as DW2 and stated that he scribed the Will on the asking of Kishan Chand and the same was

read over to him. Pritam Ram DW3 also proved the sale deed dated 23.6.1989 Ex.D2 in his favour and claims to be a *bona fide* purchaser.

DW4 Dharam Singh, Kanungo, proved the mutation Ex.DW4/A. Similarly DW5 Jagir Singh also supported the case and proved documents Ex. DW5/A to DW5/D.

After hearing the arguments of the counsel for the parties, the trial Court, while dismissing the suit, recorded the following findings:-

“15. Keeping in view of above discussion and evidence brought by both the parties, plaintiffs have failed to challenge the Will in their pleadings properly. Secondly if for the sake of arguments, they have challenged the same through the present suit, then their stand was self contradictory in the plaint. Thirdly even if for the sake of arguments, it is presumed that plaintiffs have challenged the Will rightly, then they have failed to bring any cogent and convincing evidence to prove that Will dated 4.10.1979 is forged and fabricated document. Plaintiffs have also failed to bring any other document to establish their title to the extent of their share in the suit property. On the other hand, defendants have successfully proved the fact that Will was executed by deceased Kishan Chand during his life time in favour of Jagir Singh and Jit Ram and accordingly, they had become owners in the suit property. The matter does not end here, because defendants have further established the fact that after becoming owners of the suit property, they have sold the property to defendants No.4 to 10 through various sale

deeds from time to time, which were well within the knowledge of plaintiffs right from the beginning. Defendants also proved the fact that plaintiffs were well within the knowledge about execution of Will and as well as sale deed right from the beginning but plaintiffs have failed to challenge the same within stipulated period provided under the Limitation Act. Accordingly, contention raised by learned counsel for plaintiffs referring to SWARNA DEVI VS MAHANT NATH RAM 2005(2) CCC 484 (P&H), BALWANT SINGH VS. KHUSHAL SINGH (P&H), GURCHARAN SINGH VS. SURJIT KAUR 2005(3) RCR 628 AND NARAINI DEVI VS. SURINDER KUMAR 2004(2) RCR (CIVIL) 820 (P&H) is found to be without any basis, whereas submissions made by learned counsel for defendants relying upon the case law in OM PARKASH VS. MAN SINGH 2008(1) CCC 134 (P&H), ISHWAR GANPATI VS. GURILINGAPPA 2001(3) RCR (CIVIL) 624, GURDIAL SINGH VS. RATTAN KAUR 1996(2) CCC 38 (P&H) AND ABDUL HASSAN VS. KALSUM 2000(2) RCR 200 carry weight. As such plaintiffs are neither entitled for the relief of declaration and nor for joint possession as prayed by them. On the other hand, defendants have successfully proved the fact that suit of plaintiffs is defective and same is also bared by law of limitation. Consequently, all these issues shall stand decided against the plaintiffs and in favour of defendants.

RELIEF

16. In the light of my findings on the above issue, suit of plaintiffs fails and same is hereby dismissed with costs. Decree sheet be drawn. File be consigned to the record room."

The appellants preferred an appeal before the lower Appellate Court and challenged the findings on the grounds that the appellant have a right to inherent 1/3rd share of the estate of Kishan Chand as Shamsher Singh pre-deceased, being his son.

The lower Appellate Court after considering the arguments of the appellant as well as the respondent-defendants, dismissed the appeal on the ground that the property owned by Kishan Chand, which was subject matter of the Will dated 14.10.1979 was his self-acquired property and the appellant failed to lead any evidence that it was his ancestral property. Therefore, Kishan Chand was competent to execute the Will dated 14.10.1979.

The lower Appellate Court also held that since the suit was filed after 17 years of sanctioning of the mutation, according to which the plaintiffs came to know about the Will, it being a public document as in the subsequent Jamabandis Ex.P1 for the year 1991-92 on wards, the name of the defendants was substituted in place of Kishan Chand and, therefore, the plaintiffs were having knowledge about the same and the trial Court has rightly held the suit to be time bared. The learned lower Appellate Court also held that the presence of the beneficiaries Jagir Singh and Jeet Ram at the time of execution of Will is explained by them that Kishan Chand was not in a position to move and in order to help him they took him to the Tehsil complex and there is no evidence that Kishan Chand was influenced by them. With regard to the proving of the execution of the Will as per Section 63 of the Indian Succession Act,

it is held that Amar Singh DW1, being the marginal witness has proved the same and Budh Ram, Deed Writer has also proved that he has scribed the same on the direction of Kishan Chand.

Counsel for the appellant while assailing the arguments has submitted that the Courts below have not dealt with the arguments raised by the appellant as noticed above.

It is next argued that since Jagir Singh and Jeet Ram, who are the beneficiary of the Will dated 14.10.1979 were present at the time of the execution of the Will, which was scribed by DW1 Amar Singh on the direction of Kishan Chand. The challenge is also made on the ground that it has come in the statement of DW1 Amar Singh that Jagir Singh and Jeet Ram have accompanied him and, therefore, they have drawn influence in execution of the Will.

It is next argued that though the Will was drafted in the Tehsil premises where the office of Sub-Registrar is there but it was never registered. Counsel for the appellant also submitted that the Will was executed just 20 days before the death of Kishan Chand, which is also a suspicious circumstance.

Lastly, it is argued that DW1 Budh Ram, Deed-Writer could not produce any register regarding entry of the Will.

Counsel for the appellant has referred to the Punjab and Haryana High Court Rules and Orders, Volume I, Chapter 14-B (16), to

submit that while dictating the judgment, the trial Court should contain the point or points for determination, the reasons for giving the decision so that the judgment should be complete in itself and give a concise account of the case, being between the parties intangible not only to the superior judicial Court but to the public. It is also argued that under Rule 18, the findings of fact arrived by the first appellate Court as a rule are final and cannot be challenged in the second appeal on the certain grounds, therefore, the first Appellate Court should realize their responsibility in the matter and ensure that the findings of fact in their decision is clear and precise.

Counsel for the appellant has next argued that the Courts below have not considered the points raised by appellant regarding the suspicious circumstances in the Will, i.e.

- (a) It is unregistered;
- (b) Kishan Chand died after 20 days of the registration of the Will;
- (c) The beneficiaries were present at the time of execution of the Will;
- (d) The Scriber cannot be held to be an attesting witness; and
- (e) That the Will is not proved in terms of Section 63 of the Indian Succession Act and Section 68 of the Indian Evidence Act as the attesting witness is not examined.

Counsel for the appellant has relied upon the judgment of Hon'ble Supreme Court in 2003(1) RCR (Civil) 409 **Janki Narayan Bhoir Vs. Narayan Namdeo Kadam** to submit that the Scriber cannot be held to be an attesting witness.

In reply, the counsel for the respondent has argued that firstly, the trial Court has recorded a finding that plaintiff except for hearing herself as PW1 has not examined any witness to show that any fraud is committed with deceased Kishan Chand, while executing the Will dated 14.10.1979. Counsel has further submitted that in the absence of any pleading in the plaint regarding any fraud played with Kishan Chand, the grounds taken before the lower Appellate Court without leading any evidence before the trial Court were duly considered by the Appellate Court and decided.

It has also been argued that the plaintiff failed to plead or lead any evidence that Kishan Chand was suffering from any mental disability while executing the Will in favour of his two sons and it has come in the evidence of the defendants that he was unable to walk and that is why Jagir Singh and Jeet Ram accompanied him to the Deed Writer for execution of the Will and, therefore, there presence was duly explained by them.

Counsel for the respondent has further argued that there are no suspicious circumstances as the Will is duly proved by DW1 Amar Singh and DW2 Budh Ram, Deed Writer. Counsel has further submitted that it is well settled law that if the execution of Will is duly proved, which is not surrounded by any suspicious circumstances, mere non registration of the Will is not a ground to discard the same.

After hearing learned counsel for the parties and on re-appreciation of the pleadings and evidence from the lower Court record, I find no legality or infirmity in the findings of fact arrived by both the Courts below.

Appellant-Dawariki appeared herself as PW1 and apart from this, she led no other evidence, whereas to the contrary, the respondents have not only proved the Will by way of leading the oral evidence as discussed in detail by both the Courts below.

The arguments, which are raised by the appellant are duly dealt with by the lower Courts below though the same were not pleaded in the plaint nor proved in the solitary statement of PW1, whereas to the contrary the defendants have led evidence to prove the Will in accordance with law.

The Courts below have also recorded a finding that the mutation on the basis of Will was duly sanctioned in the year 1981,

which was further reflected in the revenue records, i.e. Jamabandi for the year 1991-92 on wards and, therefore, it was a notice to the general public that the Will was executed and implemented in the revenue record prior to 1991. The suit filed by the appellant after 17 years of sanctioning of the mutation was rightly held to be not maintainable by the Courts below.

Even otherwise, the findings of fact arrived at by the Courts below the Will is duly proved and is not surrounded by any suspicious circumstance, which does not require any interference.

There is no merit in the present appeal and the same is, therefore, dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

July 15, 2022
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Whether speaking/reasoned : YES / NO
Whether reportable : YES / NO