

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 4862 of 2013 (O&M)

Date of Decision: 21.04.2022

Raj Mehta

... Appellant(s)

Versus

Vishal Mehta and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Atul Lakhanpal, Senior Advocate
with Mr. Arvindpal Singh, Advocate
for the appellant(s).

Mr. Anurag Jain and Ms. Kanupriya, Advocates
for the respondent No.1 to 4.

Ms. Sarika Gupta, Advocate
for Mr. J.S.Thind, Advocate
for the respondent No.5.

Anil Kshetarpal, J.

1. While assailing the concurrent findings of fact, arrived at by both the Courts below, plaintiff No.1-Smt.Raj Mehta has filed the present appeal.

2. In the considered view of this Court, the question which arises for consideration is as to whether a testamentary disposition of lease hold rights, executed by a testator in favour of his own daughter, who is owner of the property, is required to be seen with suspicion.

3. Some facts are required to be noticed. A pedigree table, which is reproduced below, would facilitate the understanding of the *inter se* relation between the parties.

Ram Chand Mehta						
Narain Devi (Wife)						
Raj Mehta w/o Sh. Brij Mohan Mehta	Vishal Mehta	Sushma	Kusum	Nutan	Geetika	

4. This suit was filed by Smt. Raj Mehta, daughter of late Sh. Ram Chand Mehta (wife of Sh.B.M.Mehta). A lease deed for a period of 99 years was executed in favour of late Sh.Ram Chand Mehta and Smt.Indira Munjal on 27.12.1984. Smt. Indira Munjal is Sh.Brij Mohan Mehta’s sister (the husband of Smt. Raj Mehta). Subsequently, the property under lease was purchased vide registered sale deed dated 16.08.1985 by Smt. Alka Kumari wife of Sh. Arjun Dev, Smt.Raj Mehta (daughter of Sh. Ram Chand Mehta) wife of Sh.Brij Mohan Mehta and Smt.Parveen Kumari wife of Sh.Dharampal. Subsequently, on the basis of a family settlement, Smt. Raj Mehta filed a suit claiming that Smt.Alka Kumari and Smt.Parveen Kumri have acknowledged that she is exclusive owner in possession of the property, which was purchased vide sale deed dated 16.08.1985. In the aforesaid suit, Smt.Alka Kumari and Smt.Parveen Kumari admitted the claim of the plaintiff (Smt.Raj Mehta) and suffered a statement in the Court to that effect. Unfortunately, the suit was dismissed by the Court on the ground that such suit has been filed in order to defeat the provisions of the Indian Stamp Act, 1899 and the Registration Act, 1908. The first appeal, filed against the judgment on 08.05.1996, was also dismissed on 24.09.1998.

5. Late Sh.Ram Chand Mehta is stated to have executed two separate testaments (Wills). One with respect to the lease hold rights of the

property which was subsequently purchased by Smt. Alka Kumari, Smt. Raj Mehta and Smt.Parveen Kumari. Whereas the second testament was with respect to the property owned by Sh.Ram Chand Mehta. He bequeathed the aforesaid lease hold rights in favour of her own daughter Smt. Raj Mehta, who was owner to the extent of 1/3rd of the property.

6. This suit was filed by Smt. Raj Mehta and Smt. Indira Munjal on 20.08.2007 for grant of decree of permanent injunction restraining the defendants from interfering in their possession. The defendants are the brother, mother and sisters of the plaintiff-Smt.Raj Mata. The property, in question, is located in village Talwandi Rana, Tehsil and District Hisar. It has come in evidence that the remaining property of late Sh.Ram Chand Mehta is located in village Khanak, District Bhiwani. The plaintiff, in order to prove the Will, has examined PW.3 Sh.Nand Lal Mehta, Advocate, who is its attesting witness. He proved the execution of the Will while specifically stating that the Will was got typed by late Sh.Ram Chand Mehta in his presence. After reading and understanding the contents of the Will, the testator signed it not only in his presence but also in the presence of the other attesting witnesses. After the signature of the testator, both the attesting witnesses signed the Will. At the cost of repetition, this Will is restricted only to the lease hold rights of the property in village Talwandi Rana and does not deal with the remaining property owned and possessed by late Sh.Ram Chand Mehta.

7. Both the Courts below have held that the Will in question is surrounded by the following suspicious circumstances:-

a) Late Sh.Ram Chand Mehta had executed two Wills on

the same day.

- b) In the Will dated 14.04.1989, late Sh.Ram Chand Mehta had bequeathed the lease hold rights in favour of his daughter, but he did not make a recital about his wife and seven children. The reason for their exclusion has not been given.
- c) There is no recital about the second Will. Rather he states that this is his first and the last Will.
- d) There are *inter se* discrepancies in the statements of the beneficiary and the attesting witnesses about the place where the Will was typed out.

8. The learned counsel representing the respondents has submitted that the will has seen the light of the day after a period of 18 years.

9. Ex.P7 is the Will in question. This is exclusively with respect to the leasehold rights of the property located in village Talwandi Rana. The alleged second Will was executed with respect to the property located in village Khanak, District Bhiwani. Late Sh. Ram Chand Mehta was the owner of the property in village Khanak, District Bhiwani. Merely because he had executed two Wills on 14.04.1989 would not be sufficient to discard the Will which is signed not only by the testator, but also by the two attesting witnesses. The testator, using his wisdom, opted to executed two separate testaments. In the considered opinion of the Court, this itself is not sufficient to doubt the correctness/genuineness of the Will.

10. On a careful reading of the Will (Ex.P7), it is evident that he has recited in the Will that he has a son- Vishal, five daughters- Raj Mehta,

Sushm Mehta, Nutan Mehta, Kusum Mehta and Geetika Mehta. Thereafter, he recites that Smt. Raj Mehta, Smt. Sushm Mehta and Smt. Kusum Mehta are already married. He also discloses that his wife Smt. Narain Devi is still alive. In these circumstances, it is not appropriate to form an opinion that the testator did not make a recital about his wife and six children. This matter is required to be examined in the peculiar facts of the case. Ex.P7, the Will, is exclusively with respect to the leasehold rights. Hence, it will not be appropriate to discard the Will, which has been executed in accordance with Section 63 of the Indian Succession Act. As regards the next reason, the matter has already been discussed. It is not sufficient to doubt the Will on the ground that it has been recited that this is his first and last Will. With regard to the leasehold rights, this is the first and last Will of the testator.

11. Both the Courts have given undue importance to the *inter se* discrepancies in the statement of the beneficiaries and the attesting witness. It would be noted here that when Nand Lal Mata appeared as PW.3, he was not cross-examined with regard to the place where the Will was executed. However, when Smt. Raj Mehta appeared in evidence, she was called upon to explain as to where the Will was executed. She stated that the Will was executed at home. In such circumstances, there is no discrepancy. The Courts have also held that Nand Lal Mata has stated that none of the family members was with the testator when the Will was executed. Whereas Smt. Raj Mehta States that the Will was prepared at home. It would be noted here that there was no suggestion given to Smt. Raj Mehta, during her cross-examination, that she was present at the time of execution of the Will.

Merely because the Will was executed at home is not sufficient to draw an

inference that the beneficiaries were also present. Hence, there is no contradiction.

12. The learned counsel representing the respondent has submitted that the Will has seen light of the day after a period of 18 years. It would be noted here that the Will was only with respect to the leasehold rights of the property in favour of his daughter who was also owner to the extent of 1/3rd share. Hence, in these circumstances, it will not be appropriate to doubt the execution of the Will particularly when it was only restricted to the request of leasehold rights.

13. Keeping in view the aforesaid facts, the judgments and decrees passed by both the Courts below are suffering from material errors. Both the Courts have failed to appreciate the evidence in proper perspective. Consequently, the appeal is allowed while setting aside the judgments and decrees passed by both the Courts below. The suit, filed by the plaintiff for grant of decree of permanent injunction restraining the defendants from interfering in her possession and alienating, transferring or creating charge of third person in any manner is decreed.

14. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

April 21, 2022
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No