

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-2305-1984
Reserved on: 13.09.2023
Date of decision: 19.09.2023

SHARDHA NAND ..Appellants
Versus
ZILE SINGH ..Respondents

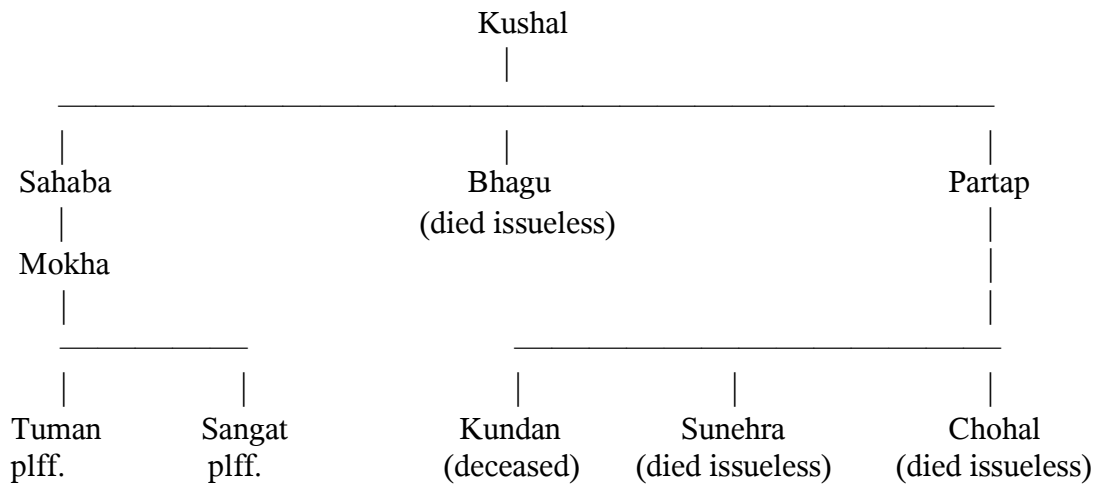
CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. R.K. Chhokkar, Advocate
for the appellant.

Mr. Rajinder Goel, Advocate
for respondent.

ANIL KSHETARPAL, J.

1. The correctness of concurrent findings of the fact arrived at by the Courts below is challenged by the plaintiffs in this second appeal. Their suit for possession of 35 kanal and 14 marlas land was decreed by the trial Court to the extent of 18 marlas, whereas, with respect to the remaining land, the suit has been dismissed by both the Courts below. In order to understand the relationship between the parties, a small pedigree table is necessary, which is drawn as under:-



2. Sh. Kundan is stated to have died issueless. On 16.01.1973, he executed a registered Will in favour of Sh. Zile Singh son of Sh. Kali Ram

(nephew from in the relations). The correctness of the aforesaid Will was challenged by Sh. Tuman and Sh. Sangat on the ground that such alienation is against the custom prevalent in *gujjars*. Both the Courts have come to a concurrent conclusion that execution of a registered Will has been proved by examining both the attesting witnesses namely DW-6 (Sh. Pala Ram) and DW-7 (Sh. Chander Bhan). The official from the office of the Sub-Registrar to prove the registration of the Will, was also examined as DW-4. The defendants also examined the fingerprint and handwriting expert to prove the thumb impression of Sh. Kundan on the Will as DW-3.

3. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook along with the requisitioned record.

4. The learned counsel representing the appellant contends that both the Courts have erred in appreciating the evidence as the Will was surrounded by suspicious circumstances. It is submitted that Sh. Zile Singh is not the real nephew of Sh. Kundan, who was aged about 80 years. He submits that the Courts have erred in overlooking the suspicious circumstances surrounding the Will. He further contends that as per the customary law, the alienation of the property was not permissible, by way of Will.

5. On the other hand, the learned counsel representing the respondent submits that both the brothers of Sh. Kundan had died issueless and Sh. Kundan himself did not have a son. He submits that in such circumstances, particularly when the plaintiffs were not residing in village Adhmi but resided in village Naraina, therefore, the Will is proved because it was Sh. Zile Singh, who was looking after Sh. Kundan in old age.

6. This Court has considered the submissions of the learned

counsel representing the parties.

7. It may be noted here that the execution of the registered Will has been proved by examining both the attesting witnesses and the learned counsel representing the appellant has failed to draw the attention of the Court to any specific suspicious circumstance, which has not been examined by both the Courts below. It has come on record that the plaintiffs were not residing in the village where the testator was residing, whereas, on the other hand, Sh. Zile Singh was residing in the same village and was taking care of late testator. Moreover, both the brothers of Sh. Kundan namely Sh. Sunehra and Sh. Chohal died issueless. Hence, the Will dated 16.01.1973 is not unnatural.

8. As regard the next argument of the learned counsel representing the appellant, it may be noted that State of Punjab enacted the Punjab Custom (Power to Contest) Act, 1920 (hereinafter referred to as the "1920 Act") to restrict the power of descendant or collaterals to contest an alienation of the immovable property.

9. Section 6 of the 1920 Act, reads as under:-

"6. Limitation on the right to contest alienation and appointments of heirs :-

Subject to the provisions contained in Section 4 and notwithstanding anything to the contrary contained in Section 5, Punjab Laws Act, 1872, no person shall contest any alienation of ancestral immoveable property or any appointment of an heir to such property on the ground that such alienation or appointment is contrary to custom, unless such person is descended in male lineal descent from the great-great-grandfather of the person making the alienation or appointment."

10. It is evident that after coming into force of 1920 Act, the alienation of the property contrary to custom is permissible only if the person who has challenged the alienation is descended in male lineal descent from the great-great-grandfather. In the dictionary, the exact

meaning of the ‘lineal’ is in a direct line of descent. In these circumstances, the alienation of the property contrary to custom can only be challenged if the alienation is by any person who is descended in male lineal descent from the great-great-grandfather of the person making the alienation. “Alienation” includes any testamentary disposition of the property. Sh. Kundan is not one of the persons who has descended in male lineal descent from the great-great-grandfather of Sh. Tuman and Sh. Sangat. Hence, the challenge is without any legal basis.

11. Keeping in view the aforesaid facts, both the Courts have correctly held that the plaintiffs were not entitled to challenge the alienation being contrary to custom after the enforcement of the 1920 Act.

12. Dismissed accordingly.

13. All the pending miscellaneous applications, if any, are also disposed of.

September 19th, 2023
Ay

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No