

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-20-2022 (O&M)
Date of decision: 10.01.2023

Kimti Ram alias Kimti Lal

...Appellant

V/S

Gulshan and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Abhinav Sood, Advocate for
Mr. Vikram Singh, Advocate,
For the appellant.

ARUN MONGA, J. (ORAL)

For convenience, parties herein are described as per recitals before the trial Court.

2. Having suffered concurrent adverse findings by the two Courts below, the plaintiff is in second appeal before this Court assailing the trial Court judgment and decree dated 16.08.2016, as upheld by the learned First Appellate Court vide its judgment and decree dated 19.08.2021.

3. Briefly stated, facts as noticed by Courts below are that defendants are the real brothers of plaintiffs. Plot No.105 was purchased by the mother of the parties to the suit, namely, Bhagwano Devi vide registered sale deed No.5150, dated 14.03.1984 and thereafter, the house was constructed over the said plot. Mother of the parties expired on 6.12.2001 and after her death, the house in question was inherited by plaintiffs and defendants in equal shares. The plaintiffs and defendants are the only first class legal heir of deceased Smt.Bhagwano Devi and there is no other legal heir of deceased Smt. Bhagwano Devi. Father of the parties has already expired. In this way, the plaintiffs are owners in possession of

1/2 share in equal shares and the defendants are owner in possession of remaining 1/2 share.

3.1 It is further alleged that the house in question is joint property of the parties and the same has not been partitioned by any competent court till date. The plaintiffs and defendants are owners in possession of the house in question as per their respective shares. Neither the plaintiffs nor the defendants are in exclusive possession of the house. Since the house in question is joint property of the parties, therefore, a dispute regarding the joint property arose between the parties, as such, it has become necessary to get the house in question partitioned, as per respective shares of the parties. Plaintiffs requested the defendants to get the property partitioned and not to alienate, transfer or mortgage the suit property without getting it partitioned but they refused to accept the genuine request of plaintiffs.

3.2 The defendants filed their written-statement in which they disclosed that Smt. Bhagwano Devi during her lifetime executed a Will dated 20.10.2001, which was registered after her death vide Vasika No.453 dated 29.08.2011, whereby she bequeathed her property in favour of the defendants. Thereafter, amended plaint was filed by the plaintiff mentioning therein that Smt. Bhagwano Devi never executed any Will in favour of the defendants during her lifetime. The said Will is false, forged, bogus, null and void, based on fraud and misrepresentation and surrounded by suspicious circumstances. As such, the same is not binding upon the rights of plaintiffs and is liable to be set aside because at the time of execution of alleged Will, Smt. Bhagwano Devi was not in her good state of mind as she was suffering from age related ailments, as such, she was not capable to understand her good and bad and was confined on bed. The alleged Will was executed by Smt. Bhagwano Devi on 6.10.2001 and she died on 6.12.2001 i.e., after two months of the execution of the impugned Will. Defendants never disclosed about the said Will to plaintiffs on any occasion, rather, they remained

mum for about ten years and got the said Will registered on 29.08.2011, which creates suspicion. Due to joint property i.e., house in dispute, a dispute arose between the parties to the suit, therefore, plaintiffs wish to get the house constructed on plot No.105 partitioned. Hence the civil suit.

4. Upon notice, the defendants appeared and contested this suit by filing the joint written statement. They have challenged the suit on the grounds of frivolous nature of litigation, maintainability, cause of action, locus standi and non-joinder of the necessary parties etc. On merits, it is admitted that mother of the parties had expired on 6.12.2001, but it is denied that after the death of mother Smt. Bhagwano Devi, the house in question has been inherited by the parties to the suit. It is submitted that during her lifetime i.e. on 20.10.2001 Smt. Bhawano Devi executed a Will vide which she bequeathed her entire properties in favour of the defendants. The said Will was executed by Smt. Bhagwano Devi voluntarily and in a sound disposing state of mind in the presence of witnesses and the said Will was got registered by defendants after the death of Smt. Bhagwano Devi with the office of Sub Registrar, Hisar vide entry No.453 dated 29.08.2011. As such, after the death of Smt.Bhagwano Devi, defendants have become absolute owner in possession of the house in question and the plaintiffs have no concern whatsoever with the same. It is specifically denied that the house in question is joint property of the parties. Plaintiffs are living separately from the answering defendants since long.

4.1 It is further submitted that Smt. Bhagwano Devi during her lifetime used to live with defendants in the house in question and after the death of Smt. Bhagwano Devi, the house in question is in exclusive possession of defendants and they are residing in the same alongwith their respective families. It is also submitted that the plaintiffs never cared for Smt. Bhagwano Devi during her lifetime and defendants served her till her death and Smt. Bhagwano Devi being

fully satisfied with the services rendered by the answering defendants and due to this reason, she executed the Will dated 20.10.2001, bequeathing her entire properties in favour of defendants of her own will. It is specifically denied that the Will dated 20.10.2001 has come in the knowledge of plaintiffs when defendants filed the written-statement, whereas, plaintiffs already knew about the said Will before filing the written-statement. It is denied that the said Will is false, forged, null and void and based upon fraud and mis-representation and surrounded by suspicious circumstances. It is also denied that Smt. Bhagwano Devi was not in her good state of mind and was suffering from age related illnesses. Remaining facts of the plaint are denied and a prayer for dismissal of the suit is made.

5. Based on the rival pleadings, following issues were framed:

“1. Whether the plaintiffs are entitled to the relief of possession by way of partition by metes and bounds of house in question? OPP

2. Whether the house in question is joint property of the parties and has not been partitioned till today? OPP

3. Whether the plaintiffs are entitled to the relief of injunction, as prayed for? OPP

4. Whether the plaintiffs have no locus-standi and cause of action to file the present suit? OPD

5. Whether the suit of the plaintiffs is not maintainable in the present form? OPD

6. Whether the suit is bad for mis-joinder and non-joinder of necessary parties? OPD

7. Relief.”

Additional issue was also framed on 01.02.2016, which is as below:

“2(A) If issues No.1 and 2 are proved, whether the Will dated 20.10.2001 executed by Smt. Bhagwano Devi, which was got registered after her death vide Vasika No.453, dated 29.08.2011 in favour of the defendants regarding her property, is false, forged, bogus, null and void, based on fraud and mis-representation, is liable to be set aside and not binding upon the rights of the plaintiffs? OPP”

6. The parties to the suit adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues, *ibid*.

7. On appraisal of evidence vis-à-vis pleadings, issues No.1, 2, 2A and 3, 4 and 5 were decided against the plaintiff and in favour of the defendants. Issue No.6 was decided against the defendants. Consequently, the suit of plaintiff was dismissed by the trial Court with no order as to costs. Status quo already granted was also stood vacated.

8. Learned First Appellate Court below dismissed the appeal, resulting in Regular Second Appeal by plaintiff before this Court. Learned First Appellate Court, *inter alia*, observed as below:

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“39. Admittedly, second attesting witness has not been examined by the respondents-defendants to prove the Will Ex.D1. Section 63 of Indian Succession Act makes it mandatory that the Will shall be attested by two or more witnesses, which was done in this case but to prove the Will it shall not be necessary that more than one witness be present at the same time and no particular form of attestation shall be necessary. Will in this case is attested by two witnesses. One of them has appeared in the witness box as DW3. Hon'ble Punjab and Haryana High Court in case **Nihal Singh and others versus Jugraj Singh and others, 1997 (Suppl.) Civil Court Cases 679 (P&H)** has held that

“In case of non-examination of second witness, no adverse inference can be drawn from such omission.”

40. Hon'ble Supreme Court of India in case **Pentakota Satyanarayana and others versus Pentakota Seetharatnam and others, 2005(4) RCR (Civil) 615** has held that

As per Section 68 of Indian Succession Act, initial onus to prove the Will is on pronouncers. Thereafter onus would shift to respondents. Respondents will have to establish their case of undue influence or coercion to remove suspicious circumstances.

41. Hon'ble Supreme Court of India in case **Daulat Ram and others versus Sodha and others, 2005 (1) Civil Court Cases 471 (S.C.)** has held that

Burden to prove that the Will was forged or that it was obtained under undue influence or coercion or by playing fraud is on the person who alleges it to be so.

42. *Here in this case, it is the appellant-plaintiff who alleges that the Will is a forged and fabricated document but no evidence has been brought on file to prove how the Will was fabricated and a fraud has been committed. Mere allegations without any evidence are of no consequence.*

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44. *In view of my above discussion, when the property has already been bequeathed in favour of the respondents-defendants by Smt. Bhagwano Devi vide Will Ex.D1 nothing left for partition by metes and bounds, therefore, I find no reason to differ with the learned trial court and its finding on issues No.1,2, 2A and 3 stand affirmed.*

45. *The appellant-plaintiff has failed to prove himself to be joint owner in possession of the suit property as the property in dispute has already been transferred in the name of the respondents-defendants vide Will Ex.D1, therefore, the appellant-plaintiffs have no locus-standi to file the present suit and the suit is not maintainable in the present form. Therefore, findings of learned trial court on issue No.4 and 5, thus, also stand affirmed.*

46. *The issue no. 6 was neither pressed before the learned trial court and nor before this Court during the course of arguments in appeal. Therefore, the findings of learned trial Court on this issue also stands affirmed.*

47. *As a sequel to my above discussion, finding no merit in appeal, the same stands dismissed with costs."*

9. I have heard the learned counsel and perused the judgments of both the Courts below.

10. To my mind, judgments under challenge have been rendered after due and correct appreciation of record including the evidence adduced by the parties.

11. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below. No interference is thus called for to disturb the said concurrent findings. In this second appeal, no fresh ground worthy of interference is made out.

12. No question of law, much less substantial one, a *sine qua non* for entertaining regular second appeal, is involved herein, for exercise of appellate jurisdiction of this Court under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

13. As an upshot of my preceding discussion, the appeal is dismissed, being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.

14. Pending application/s, if any, shall also stand disposed of.

15. No order as to costs.

(ARUN MONGA)
JUDGE

January 10, 2023

Vandana

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No