

In the High Court of Punjab and Haryana, at Chandigarh**Regular Second Appeal No. 3069 of 2023 (O&M)****Date of Decision: 01.12.2023**

Kuldeep Singh

... Appellant(s)

Versus

Smt. Ranjit Kaur and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Amit Jain, Senior Advocate
with Mr. Varun Parkash, Advocate
for the appellant(s).

Mr. Puneet Bali, Senior Advocate
with Mr. Bhagyashri Setia and Mr. Mayank Mathur, Advocates
for the respondents.

Anil Kshetarpal, J.

1. The Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in *Pankajakshi (Dead) through LRs v. Chandrika and Others (2016) 6 SCC 157*.

2. In this regular second appeal, the plaintiff assails the correctness of the concurrent findings of facts arrived at by both the Courts below while dismissing his suit for the grant of decree of declaration to the effect that the Will dated 20.10.2007, allegedly executed by his father late Sh. Gurdial Singh in favour of Ranjit Kaur, his mother, is illegal, void and full of suspicious circumstances surrounding the Will and as such, it does

not effect his rights in the properties left behind by his his father late

Sh.Gurdial Singh.

3. At this stage, it would be appropriate to draw a family tree to understand the relationship between the parties:-

Gurdial Singh		
Ranjit Kaur		
Kuldeep Singh	Bhupinder Singh	Jagdish Kaur

4. Late Sh.Gurdial Singh was working as a Senior Assistant Commissioner of Police in Singapore. Thereafter, he got settled in Australia. He is alleged to have executed a registered Will on 27.10.2007 bequeathing his property in favour of his widow, namely Ranjit Kaur. The aforesaid Will was probated by the Supreme Court of New South Wales, Australia, on 02.12.2010, because late Sh.Gurdial Singh also left behind the property in Australia.

5. The plaintiff, while filing the suit, claims that the aforesaid Will is forged and fabricated and is surrounded by the suspicious circumstances. The defendants have produced attested copy of the Will which has been probated by the Supreme Court of New South Wales, Australia. On appreciation of the evidence, both the Courts below dismissed the suit.

6. Heard the learned senior counsel representing the parties, at length and with their able assistance, perused the paper-book along with the photocopy of the record produced by the learned counsels.

7. The learned senior counsel representing the appellant contends that the Will has not been proved to have been executed in accordance with

Section 63 of the Indian Succession Act, 1925 (hereinafter referred to as “the

1925 Act”) and it has not been proved in the Court in accordance with Section 68 of the Indian Evidence Act, 1872 (hereinafter referred to as “the 1872 Act”). He further contends that as per Section 13 of the Code of Civil Procedure, 1908 (hereinafter referred to as “CPC”), the foreign judgment is not binding and no order of grant of probate has been produced. He submits that as per Section 86 of the 1872 Act, a certified copy is admissible in evidence, but it has never been produced. Towards the end, he contended that a copy of the Will has not been exhibited, therefore, it cannot be relied upon.

8. Per contra, the learned senior counsel representing the respondents submits that the judgment passed by the Court of competent jurisdiction, while granting probate, operates as *res judicata* in view of the judgment passed in ***Darshan Singh v. Kuldeep Singh 1979 AIR (Punjab and Haryana) 250***. The plaintiff himself was in Australia and he admits that late Sh. Gurdial Singh had executed a Will which was probated by the Court of competent jurisdiction. Hence, he submits that the remedy for the plaintiff is to file an application for revocation of probate in that Court.

9. This Court has considered the submissions of the learned senior counsels representing the parties. Section 63 of the 1925 Act would not be applicable because the registered Will was not executed in India. Admittedly, the Will was executed in Sydney, Australia. At that time, the Testator was not only residing in Sydney, but he was also the owner of certain properties in Sydney.

10. As regards the arguments based on Section 68 of the 1872 Act, it would be noticed that Section 41 of the 1872 Act provides that a final

judgment, order or decree of a competent Court in exercise of probate jurisdiction is relevant, which is extracted as under:-

“41. Relevancy of certain judgments in probate, etc., jurisdiction.—A final judgment, order or decree of a competent Court, in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

*Such judgment, order or decree is conclusive proof—
that any legal character which it confers accrued at the time when such judgment, order or decree came into operation;
that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment order or decree declares it to have accrued to that person;*

that any legal character which it takes away from any such person ceased at the time from which such judgment, order or decree declared that it had ceased or should cease;

and that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, order or decree declares that it had been or should be his property.”

11. It is evident that if an order of probate confers upon any legal character or declares any person to be entitled to any such character is relevant when the existence of any such legal character is relevant. It is also provided that such judgment, order or decree is a conclusive proof.

12. The learned senior counsel representing the appellant has relied upon the judgment in *Y. Narasimha Rao and Others v. Y. Venkata Lakshmi and Another (1991) 3 SCC 451*. In that case, a divorce decree granted by the foreign Court were produced. The Court found that the parties were married in India and were governed by the provisions of Hindu Marriage Act, 1955 (hereinafter referred to as “the 1955 Act”) and the ground on which the decree of divorce was passed by the Court located outside the country was not covered by the 1955 Act. Moreover, the husband was not domicile of foreign country, but was only technically staying in U.S. The Court further found that the husband played a fraud while giving incorrect jurisdictional facts. In those circumstances, the Court held that the foreign Court decree is not binding. However, the facts of this case are entirely different. The plaintiff has not led any evidence to prove that the aforesaid Will was not probated in accordance with law prevalent in New South Wales, Australia. As per Section 14 CPC, the Court is required to presume that such judgment was pronounced by a competent Court of jurisdiction unless contrary appears on the record. Section 14 CPC admits only one exception which is to the effect that such presumption may be displaced by proving want of jurisdiction. As already noticed, the plaintiff has not produced any evidence.

relies on Section 13 CPC. It would be noted here that Section 13 CPC provides that a foreign judgment shall be conclusive as to any matter thereby directly adjudicated. However, there are certain exceptions. In this case, the plaintiff has failed to prove that the judgment passed by the Supreme Court of the New South Wales, Australia, is liable to be ignored on the grounds specified in the exceptions to Section 13 CPC. Heavy onus lays on the plaintiff to prove those facts.

14. At this stage, it would be relevant to note that when the plaintiff appeared in evidence, he made a significant statement which reads as under:-

“It is a fact that when the present suit was filed, the defendants were living in the suit property. I had told them that I am filing the said suit. I had met my mother last in Sep 2016. She was in hospital at that time and was unwell. It is wrong to suggest that she is not capable of travelling to India. I did not challenge the probate in Australia as I was not aware that there was a will. In 2016 when I was in Australia I was aware of the fact that there was a will. I stayed in Australia approximately 3 months in the year 2016. I did not challenge the probate in Australia during my stay in the year 2016 as it can not be challenged according to the law. It is wrong to suggest that probate can be challenged in Australia at any point of time by any of the legal heirs. I did not lodge any claim to any of the properties of my father in Australia as probate had already been issued. I do not accept the probate allowed by the court in Australia.”

15.

On the careful reading of the aforesaid statement, it is evident

that the plaintiff went to Australia and stayed there for three months. He admits that he did not challenge the probate granted in Australia during his stay. Rather he stated that it cannot be challenged according to law applicable in that State.

16. The next submission of the learned senior counsel representing the appellant is based on Section 86 of the 1872 Act, which provides for presumption as to certified copies of foreign judicial records. One way is to produce a document purporting to be a certified copy of the judicial record by getting it certified by any representative of the Central Government and the second is to produce certified copies of the judicial record from that country. In this case, the copies of probate as well as the Will are embossed with the seal of Supreme Court of New South Wales, Australia. Thereafter, it is also certified by an official. No evidence has been led to prove that such certification or the seal of Supreme Court of New South Wales, is fake. Though the learned senior counsel representing the appellant made a feeble attempt to allege that only a photocopy was produced, however, when the aforesaid document was produced in evidence, the learned counsel representing the plaintiff objected to its admissibility but not on the ground that it is not a certified copy. The learned counsel only raised a vague objection. Undoubtedly, the aforesaid probate and the Will have not been marked as exhibit, however, proviso to Order XIII Rule 4 CPC do enable the Court to exhibit the aforesaid document. The proviso is applicable in the States of Punjab and Haryana and Union Territory of Chandigarh in view of the amendment brought in on 11.06.1974.

(*supra*), the Court held that the probate judgment is a judgment in *rem* and is binding on all persons whether they are parties to those proceedings or not. Similarly, the Bombay High Court in ***Ramesh Nivrutti Bhagwat v. Dr. Surendra Manohar Parekhe (2020) 17 SCC 284*** held that such order of probate is binding and is amenable to challenge only in that Court which granted the probate.

18. Keeping in view the aforesaid facts and discussion, there is no ground to interfere in the concurrent findings of facts arrived at by both the Courts below. Hence, the present appeal is dismissed.

(Anil Kshetarpal)
Judge

December 01, 2023

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No