

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA-4481-2015 (O&M)

Date of decision: 23.11.2023

Sh.Hukam Chand (dead) through LRs

....Appellant

Versus

Kamlesh Chand and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Pavan Malik, Advocate for the appellant

Mr.Amit Jain, Advocate for the respondents

ANIL KSHETARPAL, J (Oral)

1. In this Regular Second Appeal, the plaintiff through his legal representatives assails the correctness of the concurrent findings of fact arrived at by the courts below, while dismissing his suit for grant of decree of declaration with a consequential relief of permanent injunction.

2. In order to comprehend the issue involved in the present case, some relevant facts, in brief, are required to be noticed. The dispute is with regard to succession/inheritance of the property of late Sh. Chuttan, who was survived by his two sons and a married daughter. The plaintiff-Sh.Hukam Chand and defendant No. 1 Kamlesh Chand are his two sons, whereas defendant No. 2 (Chanderwati) is his daughter. Late Sh.Chuttan died on 28 February, 2001. It is the case of defendant no.1 Kamlesh Chand that late Sh.Chuttan executed a registered Will while bequeathing all his

property in his favour on 1st February, 2001. Sh.Hukam Chand filed the suit on 3rd November, 2011 claiming that the property is a joint Hindu ancestral and coparcenary property and Late Sh.Chuttan never executed any Will. Defendant no.1 while contesting the suit relied upon the registered Will dated 1st February, 2001. It was contended that the property was neither a joint Hindu family property nor coparcenary property. It was further pleaded that the plaintiff has filed the suit in collusion with defendant No. 2 and in fact, the plaintiff on 1st April, 1985 sold some part of the land to defendant No. 1 for Rs. 1500/- and thereafter, the plaintiff further sold the same to a stranger for an amount of Rs. 2500/-.

3. In order to prove the Will, defendant examined Mehmood Khan, Nambardar of the village who was the attesting witness of the Will, scribe Sh. Jagdish Prashad Gupta was also examined. Both the courts, on appreciation of evidence, have concurrently found that the execution of the registered Will has been proved. Thus, the suit filed by the plaintiff has been dismissed by both the courts below.

4. Heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

5. The learned counsel representing the appellant has made the following submissions:-

i) Defendant No. 1 did not get the mutation of the Will sanctioned.

ii) Details of the assets have not been disclosed in the Will.

iii) Late Sh. Chuttan was 82 years of age and was not keeping good health.

iv) Nambardar of the village namely Mehmood Khan has not proved the Will in accordance with the requirements of Section 63 of the Indian succession Act, 1925, read with Section 68 of the Indian Evidence Act, 1872 (hereinafter referred to as '1872 Act') and the record of the Sub-Registrar has not been produced.

6. It is further contended that the defendant has not proved that the recital in the Will with regard to the testator having given some part of the property to the plaintiff, as correct.

7. On the other hand, the learned counsel representing the respondents submits that sanctioning of mutation of the Will is not necessary to prove the Will. He further submits that the testator has specifically stated that all my agricultural land, house, amount lying in the Bank located in village Biwan will stand bequeathed in favour of Kamlesh Chand. He submits that the sufficient details have already been given. He further submits that the attesting witness of the Will, Mehmood Khan has clearly stated that at the time of execution of the Will, Sh. Chuttan was maintaining good health.

8. This Court has considered the submissions made by the learned counsel representing the parties. Learned counsel representing the appellant has produced a photocopy of the

registered Will executed by Late Sh. Chuttan. It is evident that on the first page of the Will, photograph of Sh.Chuttan is pasted and he has thumb marked the same in a manner that his half thumb impression is on the paper whereas the remaining half is on the photograph. Similarly, at the bottom of first page Sh. Chuttan has again thumb marked the Will. On the second page, Sh. Chuttan has again thumb marked the Will alongwith the signatures and thumb impression of two attesting witnesses. At the time of registration of the Will, Sh. Chuttan has appended his two thumb impressions in the presence of the Sub-Registrar. The appellant has not disputed the fact that the photograph pasted on the Will is not of late Sh. Chuttan.

9. As far as the first argument of the learned counsel is concerned, it may be noted that the mutation entries are made only to update the official records maintained by the Executive agencies working for the Government and therefore, that would not be a circumstance to doubt the correctness of the Will. As regards, the second argument, it may be noted that Sh. Chuttan recited that he is bequeathing all his movable and immovable property including the agricultural land, house, deposits in the Bank located in village Biwan in favour of Kamlesh Chand. In the considered view of the Court, such details are sufficient to make a valid bequest.

10. As regards the next argument, it may be noted that there is no evidence to prove that Late Sh.Chuttan at the time of execution and registration of the Will was not mentally agile and aware of the

proceedings. The Will has been registered in the office of the Sub Registrar which itself means that he came to the office of the Sub-Registrar to register the Will. Hence, there is no substance in the argument of the learned counsel representing the appellant.

11. The next argument of the learned counsel is also without substance as Sh. Mehmood Khan appeared in evidence as DW2. He has stated that he alongwith the other attesting witness namely Hoshier were present when the Will was read over by the scribe to the testator. The testator, after admitting its contents to be correct, appended his thumb impression on the Will and thereafter, he, in the presence of Sh. Chuttan as well as other witnesses, had appended their signatures and thumb impression. There is no evidence that Mehmood Khan and Hoshier were not present at the time when the Will was thumb marked and signed. In these circumstances, the requirements of Section 63 of the Indian Succession Act, 1925 read with Section 68 of the 1872 Act stand complied with.

12. The next argument of the learned counsel representing the appellant is with regard to failure of defendant to summon the official from the office of the Sub-Registrar. In this case, the original Will has been produced. It is a registered document. If the plaintiff had any doubt, he could summon the official from the office of the Sub-Registrar. The Will is required to be proved in accordance with Section 68 of the 1872 Act which does not mandate

that the record from the office of the Sub-Registrar must be produced.

13. The last argument of the learned counsel also does not have substance as it has been proved that during the life time, late Sh.Chuttan executed the sale deed in favour of Hukam Chand (plaintff) who later on sold the property in favour of Fateh Mohammed.

14. Keeping in view the aforesaid facts, no ground to interfere is made out.

15. Dismissed.

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

23.11.2023

(ANIL KSHETARPAL)
JUDGE

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No