2024:PHHC:055148

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Reserved on : 12.03.2024
Pronounced on : 22.04.2024

1. RSA-2421-1992

Bhagwati Parsad ...... Appellant

versus

Maya Wati ...... Respondent

2. RSA-2422-1992

Bhagwati Parsad ...... Appellant

versus

Maya Wati ...... Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Prateek Gupta, Advocate and
Mr. Prashant Puri, Advocate
for the appellant.

Mr. Amit Jain, Senior Advocate with
Mr. Anupam Mathur, Advocate
for the respondents.

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PANKAJ JAIN, J. (Oral)

1. These two appeals are between same parties involving same property arising out of two suits in the background of similar facts and thus are being decided by a common judgment. The apple of the dispute is a property left by Shanker s/o Shibu Ram father of respondents Mayawati and Nirmala-uncle of the appellant Bhagwat Parsad.

2. Shanker was owner of half share of land measuring 81 kanal, 40 marlas situated in revenue estate of village Bhepoli Sub-Tehsil Radaur, District Kurukshetra and 1/3rd share out of land measuring 04 bhigas and

12 biswas and a residential house at Munda Majra. Shanker died on 01.09.1981 leaving behind his two daughters-the respondents. His wife pre-deceased him. The suit property is being claimed by Bhagwat Parsad who filed suit for declaration with further relief of permanent injunction propounding an unregistered Will dated 31.12.1980 in his favour to the exclusion of the respondents. Daughters filed suit for permanent injunction seeking restrained against Bhagwat Parsad and others from alienating the suit property on the basis of Will.

3. Prior to filing of the aforesaid suits, the parties fought for mutation before the revenue authorities. Bhawat Parsad propounded same Will before the revenue authorities seeking mutation. It was contested by the daughters. The mutation was sanctioned on the basis of natural succession in favour of respondents-daughters. WILL was discarded.

4. Trial Court held that the Will stood fully proved and thus decreed the suit filed by Bhagwat Parsad granting decree of declaration to the effect that he was owner of the suit property. The other suit filed by daughters titled as Mayawati and another vs. Bhagwat Parsad bearing No.370-CS was ordered to be dismissed. The judgment passed by trial Court was assailed by respondents-daughters by filing two separate appeals. Appellate Court reversed the findings on the issue of Will holding the same to be surrounded by suspicious circumstances, thereby dismissing the suit filed by Bhagwat Parsad and decreeing the suit filed by respondents-daughters.

5. Counsel for the appellant while assailing the impugned judgment submits that in order to hold that the Will was surrounded by suspicious circumstances, the Appellate Court has relied upon statements

recorded by the revenue authorities during mutation proceedings. It is being asserted that revenue authorities were exercising administrative functions and statements made by the parties in the administrative inquiry which were purely for fiscal purpose cannot be formed basis to reverse a well reasoned judgment passed by the trial Court. Counsel for the appellant urges that the Will Ex.P-1 has been duly proved. The scribe thereof appeared as PW-1. Attesting witness appeared as PW-3, yet the lower Appellate Court has non-suit the appellant merely on surmises and conjunctures. Reliance is being placed upon judgment passed by the Apex Court in ***B. Venkatamuni vs. C.J. Ayodhya Ram Singh and others 2007 AIR (Supreme Court) 311*** and the judgments passed by this Court in ***CWP No.13799 of 2010, titled as 'Jagjit Singh vs. Divisional Commissioner, Patiala & ors.'*** and ***CWP No.3934 of 2023,*** titled as ***'Santosh vs. The Financial Commissioner-cum-Secretary to Government, Department of Revenue and others'*** to hammer forth the contention that mutation proceedings are administrative in nature and are not judicial proceedings.

6. Learned senior counsel representing the respondents submits that onus to prove the Will is upon the propounder thereof. Will in issue is unregistered. The Courts are under obligation to look into the suspicious circumstances pointed out by the defendants. As per settled law onus lies heavily upon the propounder to remove the suspicion by leading appropriate evidence. Here is a case wherein the plaintiff i.e. the propounder of the Will examined attesting witnesses of the Will namely Babu Singh Lambardar and Ram Kishan s/o Gopi Ram in mututation proceedings. Despite being closely related to Bhagwat Parsad, they did

not support the Will. He submits that the only witness examined in the present proceedings is Basheswar Dutt and his close relation with the plaintiff-Bhagwat Prasad is admitted. The only independent attesting witness Babu Singh having been deliberately withheld by the plaintiff, it is a clear case wherein the statement made by Babu Singh before the revenue authorities is admissible under Section 33 of the Evidence Act and has been rightly relied upon by the Courts below. He further submits that re-appreciating evidence is not within the scope of Section 41 of the Punjab Courts Act. Since pure findings of facts have been recorded by Appellate Court, the present appeal deserves to be dismissed.

7. I have heard counsel for the parties and have gone through the records of the case with their able assistance.

8. The real issue between the parties is Will dated 31.12.1980. The same has been produced in evidence as Ex.P-1. In order to prove the same, the plaintiff-appellant examined PW-1 Rajinder Nath Sharma-the scribe of the Will. Out of the three attesting witnesses namely Babu Singh Lambardar, Ram Kishan s/o Gopi Ram and Basheswar Dutt s/o Munnu Ram, Basheswar Dutt was examined as PW-3.

9. The plea raised is that the proceedings before the revenue authorities are administrative and not judicial and thus statements Ex.D2 and Ex.D3 were not admissible.

10. To appreciate the plea, it will be apt to peruse Section 33 of the Evidence Act:-

> **"33. Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated.**
>
> Evidence given by a witness in a judicial proceeding, or before any person authorised by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead, or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which under the circumstances of the case, the Court considers unreasonable :
>
> Provided that the proceeding was between the same parties or their representatives in interest;
>
> that the adverse party in the first proceeding had the right and opportunity to cross-examine;
>
> that the questions in issue were substantially the same in the first as in the second proceeding."

11. A perusal of the provision would reveal that the same talks of:-

(i) Evidence given by witness in a judicial proceedings;
or
(ii) Evidence given by witness before any person authorised by law to take it.

12. Evidence given by witness in either of the aforesaid two situations is relevant in subsequent judicial proceedings for purpose or providing truth of the facts which it states when;

(i) the witness is dead, or

(ii) the witness cannot be found, or

(iii) the witness is incapable of giving evidence, or

(iv) the witness is kept out of the way by adverse party, or

(v) if his presence cannot be obtained without an amount of delay or expenses considered unreasonable by the Court under the given facts and circumstances. However, the same can be said to be relevant subject to satisfaction of the following 3 conditions:

(a) the proceeding was between the same parties or their representatives in interest;

(b) the adverse party in the first proceedings had the right and opportunity to cross examine;

(c) the questions in issue were substantially the same in the first as in the second proceedings.

13. The question thus arises whether statements recorded by the Assistant Collector while holding inquiry for the purpose of mutation falls in either of the afore carved categories or not. Trite it is that the mutation proceedings are not judicial proceedings, thus the statements Ex.D2 and Ex.D3 do not fall in category(i).

14. But, the revenue officer while deciding mutation proceedings is the person authorized by law to take evidence. Reason lies in the provisions of the Punjab Land Revenue Act, 1887 and the rules framed thereunder. Chapter II of the 1887 Act deals with revenue officers. Section 6 reads as under:-

> **"6. Classes of Revenue-officers.** - (1) There shall be the following classes of Revenue-officers, namely : -
> (a) the Financial Commissioner ;
> (b) the Commissioner ;
> (c) the Collector;
> (d) the Assistant Collector of the first grade; and
> (e) the Assistant Collector of the second grade.
>
> (2) The Deputy Commissioner of a district shall be the Collector thereof.
>
> (3) The [State Government] may appoint any Assistant Commissioner, Extra Assistant Commissioner or Tehsildar to

be an Assistant Collector of the first or of the second grade, as it thinks fit, and any Naib-Tehsildar to be an Assistant Collector of the second grade.

(4) Appointment under sub-section (3) shall be by notification and may be of a person specially by name or by virtue of his office or of more persons than one by any description sufficient for their identification.

(5) Subject to the provisions of this Act, the jurisdiction of the Financial Commissioner extends to the whole of the territories administrated by the [State Government] of Punjab and of Commissioners and of Collectors and Assistant Collectors to the divisions and districts, respectively, in which they are for the time being employed."

15. Sections 17, 18 and 19 of Punjab Land Revenue Act, 1887 deal with procedure. The same read as under:-

"**17. Power to make rules as to procedure: -** (1) The [State Government] may make rules consistent with this Act for regulating the procedure of Revenue-officer under this Act in cases in which a procedure is not prescribed by this Act.

(2) The rules may provide, among other matters, for the mode of enforcing orders of ejectment from, and delivery of possession of, immovable property, to contempts, resistance and the like which a Civil and rules providing for these matters may confer on a Revenue-officer all or any of the powers in regard Court may exercise in the execution of a decree whereby it has adjudged ejectment from, or delivery of possession of, such property.

(3) Subject to the rules under this section a Revenue-officer may refer any case which he is empowered to dispose of under this Act to another Revenue-officer for investigation and report, and may decide the case upon the report.

18. Persons by whom appearances and applications may be made before and to Revenue-officers: -(1) Appearances before a Revenue-officer, and applications to and acts to be done before him, under this Act may be made or done--

(a) by the parties themselves; or

(b) by their recognized agents or a legal practitioner :

Provided that the employment of a recognized agent or legal practitioners shall not excuse the personal attendance of a party to any proceeding in any case in which personal attendance is specially required by an order of the officer.

(2) For the purposes of sub-section (1), recognized agents shall

> be such as the [State Government]may by notification declare in this behalf.
>
> (3) The fees of a legal pracitioner shall not be allowed as costs in any proceedings before a Revenue-officer under this Act unless that officer considers, for reasons to be recorded by him in writing, that the fees should be allowed.
>
> **19. Power of Revenue officer to summon persons: -** (1) A Revenue-officer may summon any person whose attendance he considers necessary for the purpose of any business before him as a Revenue-officer.
>
> (2) A person so summoned shall be bound to appear at the time and place mentioned in the summons in person, or, if the summons so allows, by his recognized agent or a legal practitioner.
>
> (3) The person attending in obedience to the summons shall be bound to state the truth upon any matter respecting which he is examined or makes statements, and to produce such documents and other things relating to any such matter as the Revenue-officer may require."

16. Moreover, the first proceedings as referred to under Section 33 of the Evidence Act necessarily need not be judicial proceedings. Thus, in view of above, this Court has no doubt that the statements recorded by revenue officers fall in category (ii) as mentioned in para 15. It is also not disputed that the issue in both the proceedings was well and parties were same. The adverse party in the first proceedings had the right and opportunity to cross examine the witness as well. Coming to satisfaction of conditions enumerated further in Section 33 of the Evidence Act, both the witnesses i.e. Babu Singh as well as Ram Kishan were alive. There is no evidence that they could not be found or any of them was incapable of giving evidence. There is no evidence that the adverse party i.e. the plaintiff Bhagwati Parsad kept this aforesaid witnesses out of the way. Though, senior counsel representing the respondents submits that Ram

Kishan was related to Bhagwati Parsad but mere relation cannot be said to be sufficient to infer that Bhagwati Parsad kept Ram Kishan out of the way. In view of above, counsel for the appellant is right in contending that the statements made by Babu Singh, Ram Kishan do not satisfy requirement of Section 33 of the Evidence Act and cannot be held to be relevant. However, the issue does not stop here.

17. In the present case, propounder of the WILL Bhagwat Parsad appeared as PW-2. He testified that he does not know where the Will was got scribed and claimed that he came to know about Will only 2 to 4 days prior to death of Shankar. He was confronted with his statement before revenue authorities Ex.D1 wherein he stated as under:-

> "When this Will was scribed, I was present. I asked Rajinder that scribe Will of my uncle."

18. He further stated that he does not remember that in mutation proceedings he stated that it is my son who called the witnesses. He was again confronted with his statement wherein he stated as under:-

> "Then said Shankar Lal said so. I called Basheswar. My son brought Ram Kishan and Babu Singh."

19. Thus this all shows that he had lot more to conceal. His statement in earlier proceeding points towards his active participation in execution of WILL. Likewise, it has come on record that the executant was resident of village Munda Majra whereas the attesting witnesses were called from village Makaul. That apart Will was executed on 30.12.1980. Executant died on 01.09.1981. No effort was made in 08 months to get the Will registered despite the fact that as per the plaintiff, the Will was

executed in Tehsil complex only.

20. Doctrine of confrontation is a principle recognized under the Indian Evidence Act in terms of provisions contained under Sections 145 and 155 to unearth truth from witness being examined. After analysing whole of the evidence on record, the Appellate Court rightly held the following to be suspicious circumstances surrounding the Will in question;

> (i) Plaintiff in his earlier statement before revenue authorities admitted his active participation in execution of Will, but denied even the knowledge of the Will while appearing in the present suit. On being confronted with his earlier statement, he could not afford any explanation and simply denied knowledge of the earlier statement.
>
> (ii) Daughters-the nature heirs were excluded by Shankar Lal without giving any plausible reason.
>
> (iii) Bhagwat Parsad-the plaintiff, beneficiary of the Will was fined for forgery even the date of the death of executant Shankar Lal.
>
> (iv) Attesting witnesses were called from other village and are from the village where the executant as well as the beneficiary were residing.
>
> (v) There was a gap of 08 months between the date of alleged execution of Will and the death of the executant. As per the case of the plaintiff, the Will was executed in Tehsil premises, yet no effort was made to get the same registered.

21. Appellate Court rightly held that the cumulative effect of the aforesaid circumstances put the propounded Will under cloud of suspicion. Onus laid heavily upon the propounder i.e. the appellant to dispel the suspicious circumstances which he failed to do.

22. There are certain basic principles of law regarding Will which have been settled and reiterated by the Courts that need to be kept in mind:-

> (a) Onus to prove a Will is always on the propounder.
>
> (b) Where there is a suspicious circumstance pointed out by the opposite party, the onus lies heavenly upon the propounder to remove the suspicion by leading appropriate evidence.
>
> (c) While arriving at a finding with respect to execution of the Will, the Court is thus not only required to see that the legal formalities have been proved, but is also required to satisfy its conscience regarding totality of circumstances.
>
> (d) Section 68 of the Evidence Act postulates the mode and manner in which execution of a document is to be proved. If an attesting witness is alive, the propounder must examine one attesting witness subject to process of Court and capable of during evidence.

The list is not exhaustive.

23. The appellant though examined scribe and attesting witness of the WILL to prove legal formalities but could not dispel the suspicious circumstances surrounding the WILL.

24. There being no illegality in the impugned judgment, this Court does not find any reason to interfere in the present appeals. The same are hereby ordered to be dismissed.

25. A photocopy of this order be placed on the file of other connected case.

(PANKAJ JAIN)
JUDGE

22.04.2024
Dinesh

Whether speaking/reasoned	Yes
Whether Reportable :	Yes