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

RSA-599-1992 (O&M)**Reserved on : 18.05.2024****Date of Decision : 07.06.2024**

Ram Bilash

....Appellant

VERSUS

Sish Ram (deceased) through LRs

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Kulvir Narwal, Advocate for the appellant.

Mr. Sanjay Mittal, Advocate for the respondent.

ALKA SARIN, J.

1. The present appeal has been preferred by the defendant-appellant against the judgement and decree dated 19.02.1992 passed by the First Appellate Court whereby the judgement and decree dated 12.05.1990 passed by the Trial Court has been reversed and the suit of the plaintiff-respondent was decreed.

2. Brief facts relevant to the present *lis* that the plaintiff-respondent filed a suit for declaration that the parties to the suit were related to each other and that Patram son of Hardeva died issueless and that his wife - Shanti Devi - had also died during the lifetime of Patram. Patram is stated to be the brother of Siri Chand and Siri Chand had got a mutation of inheritance of Patram bearing No.1696 dated 28.09.1979 entered in his favour. Thereafter, the suit land was transferred to the defendant-appellant by Siri Chand who also suffered a collusive judgment and decree in Civil Suit No.1038 of 1984 decided on 06.10.1984. Thus, the present suit for declaration was filed challenging the decision in Civil Suit No.1038 of 1984

and the mutation dated 28.09.1979 and also a declaration that the plaintiff-respondent was the owner of the suit land. The plaintiff-respondent also relied on a Will dated 11.10.1971 left by Patram in his favour. The defendant-appellant filed a written statement raising the plea that Patram had died on 23.07.1977 but due to a clerical mistake in the mutation his date of death was mentioned as 10.07.1976. It was further stated that the judgment and decree dated 06.10.1984 was legal and binding on the rights of the plaintiff-respondent and that Siri Chand had executed a sale deed on 22.09.1984 in favour of the defendant-appellant herein. The defendant-appellant set-up a Will dated 22.09.1984 left by Siri Chand in his favour. It was further averred that the defendant-appellant was the owner of the suit land. Replication was filed reiterating the averments made in the plaint and controverting those made in the written statement.

3. On the basis of the pleadings of the parties the following issues were framed :

1. Whether the plaintiff is owner in possession of the property as detailed in para No.1 of the plaint, If so to what effect ? OPP
2. Whether the plaintiff is estopped by his own act and conduct to file the present suit ? OPD
3. Whether the suit is not maintainable in the present form ? OPD
4. Whether the suit is time barred ? OPD
5. Whether the defendant is entitled to special costs under section 35-A of CPC ? OPD

5-A. Whether the defendant No.1 has become owner in

possession of the suit land vide a will dated 22.9.1984 executed by defendant No.2 Siri Chand in his favour ? OPD .

6. Relief.

4. The Trial Court vide judgment and decree dated 12.05.1990 dismissed the suit holding that the signatures of the Testator on the Will were not proved to be that of Patram. It was further held that the plaintiff-respondent had failed to show as to why the Will did not see the light of the day till the filing of the present suit in 1985. Aggrieved by the same, an appeal was preferred by the plaintiff-respondent which appeal was allowed by the First Appellate Court vide judgment and decree dated 19.02.1992 reversing the findings recorded by the Trial Court. It was held that the Will dated 11.10.1971 (Ex.P1) in favour of the plaintiff-respondent was duly proved. Hence, the present regular second appeal by the defendant-appellant challenging the judgment and decree passed by the First Appellate Court.

5. Learned counsel for the defendant-appellant would contend that in the present case Patram, who was the real brother of Sish Ram (plaintiff-respondent), died on 23.07.1977 and thereafter mutation was entered in his favour on 28.09.1979. It is further the contention that due to a clerical error in the mutation No.1696 dated 28.09.1979, the date of death of Patram was mentioned as 10.07.1976. It is further the contention of the learned counsel that the Will set-up by the plaintiff-respondent was shrouded by suspicious circumstances. The learned counsel would further contend that the Will, which is stated to have been an unregistered Will, was executed on 11.10.1971 and despite the death of Patram in 1977 the same did not see the light of the day till the filing of the present suit in 1985. The learned counsel

for the defendant-appellant would further contend that in the present suit though the case of the plaintiff-respondent was that Patram had executed a Will in his favour on 11.10.1971, however, a perusal of the statement of Sish Chand (plaintiff-respondent) while appearing as PW-2 reveals that he nowhere states as to why the Will never surfaced prior to the filing of the suit. It is further the contention of the learned counsel that there is no evidence on the record to show that the plaintiff-respondent ever rendered any services to Patram despite being his brother. The learned counsel for the defendant-appellant has further drawn the attention of this Court to the cross-examination of the plaintiff-respondent where he had admitted that though he was working in Ajmer, however, his wife used to stay in village Notana and he used to visit Notana. It was also admitted that even after the death of Patram he used to visit Notana, hence, it is argued that there was no reason why the mutation was not got entered on the basis of the unregistered Will dated 11.10.1971 and infact the same did not see the light of the day till the filing of the suit. The learned counsel would further contend that the handwriting expert produced by the plaintiff-respondent had compared the signatures of Patram with signatures on the photocopies i.e. Ex.P2 and Ex.P3 whereas the report (Ex.DW6/7) by the expert produced by the defendant-appellant herein showed that the Will (Ex.P1) was a forged document since it did not bear signatures of Patram.

6. *Per contra*, the learned counsel for the plaintiff-respondent would contend that the Will Ex.P1 was duly proved by the Lawyer - Nanag Ram - while stepping into the witness box as PW1 and by the attesting witness - Dunger Singh – appearing as PW3. The learned counsel would further contend that the First Appellate Court had compared the signatures of

Patram on the documents and the Will and had come to a conclusion that the signatures on the Will matched with the signatures available on the file. It is further the contention of the learned counsel that there were no suspicious circumstances revolving around the Will Ex.P1 and hence the First Appellate Court has rightly decreed the suit.

7. I have heard the learned counsel for the parties.

8. In the present case the plaintiff-respondent had set-up a Will dated 11.10.1971 (Ex.P1). Admittedly, Patram, the Testator of the Will and whose property is in dispute, died issueless on 23.07.1977 and his wife had predeceased him. The Will Ex.P1 admittedly did not see the light of the day till the filing of the suit. A perusal of the statement and cross-examination of the plaintiff-respondent appearing as PW2 reveals that no explanation whatsoever is forthcoming for the plaintiff-respondent to have kept quiet for so long after the death of Patram and not getting the mutation entered in his favour on the basis of the Will Ex.P1. Rather, in his cross-examination the plaintiff-respondent had stated that he never went with Patram to the Court to get the Will written. However, after 5-10 days of the writing of the Will he was told about the same. That being so, the onus was on the plaintiff-respondent to have brought on record the material to show the reason why the Will never saw the light of the day prior to the filing of the suit. Further still, the evidence produced by the handwriting experts was discarded on the ground that the comparison had been made with photocopies. The Trial Court had believed the report given by the expert produced by the defendant-appellant being Ex.DW6/7 which stated that the Will Ex.P1 was not a genuine document. The First Appellate Court donned the mantle of an expert by substituting its own opinion for that of the expert. The First

Appellate Court has given no cogent reasons to discard the opinion of the experts and went ahead to compare the signatures of Patram and holding “*I have gone through signatures on both the documents available on the file. I find that the disputed signatures and the specimen signatures seem to be of one and the same person*”. The comparison done by the First Appellate Court was again based on photocopies which it itself had rejected.

9. In **Ajay Kumar Parmar vs. State of Rajasthan [(2012) 12 SCC 406]** the Hon’ble Supreme Court held :

“28. The opinion of a handwriting expert is fallible/liable to error like that of any other witness, and yet, it cannot be brushed aside as useless. There is no legal bar to prevent the court from comparing signatures or handwriting, by using its own eyes to compare the disputed writing with the admitted writing and then from applying its own observation to prove the said handwritings to be the same or different, as the case may be, but in doing so, the court cannot itself become an expert in this regard and must refrain from playing the role of an expert, for the simple reason that the opinion of the court may also not be conclusive. Therefore, when the court takes such a task upon itself, and findings are recorded solely on the basis of comparison of signatures or handwritings, the court must keep in mind the risk involved, as the opinion formed by the court may not be conclusive and is susceptible to error, especially when the exercise is conducted by one, not conversant with the subject. The court, therefore, as a matter of prudence and caution should hesitate or be slow to base its findings solely upon the comparison made by it. However, where there is an opinion whether of an expert, or of any witness, the

court may then apply its own observation by comparing the signatures, or handwritings for providing a decisive weight or influence to its decision.”

10. In **State (Delhi Admn.) vs. Pali Ram [(1979) 2 SCC 158]** the Apex Court held inter-alia that :

“30. The matter can be viewed from another angle, also. Although there is no legal bar to the Judge using his own eyes to compare the disputed writing with the admitted writing, even without the aid of the evidence of any handwriting expert, the Judge should, as a matter of prudence and caution, hesitate to base his finding with regard to the identity of a handwriting which forms the sheet-anchor of the prosecution case against a person accused of an offence, solely on comparison made by himself. It is therefore, not advisable that a Judge should take upon himself the task of comparing the admitted writing with the disputed one to find out whether the two agree with each other; and the prudent course is to obtain the opinion and assistance of an expert.”

11. The First Appellate Court while dealing with the suspicious circumstances has also not even dealt with the reasoning given by the Trial Court regarding the plaintiff-respondent not having produced the Will Ex.P1 prior to the filing of the suit on 20.05.1985 i.e. almost 8 years after the death of Patram. No other point was argued.

12. As per the law laid down by a Constitution Bench of the Hon’ble Supreme Court in the case of **Pankajakshi (dead) through LR’s & Ors. vs. Chandrika & Ors. [2016 (6) SCC 157]** there is no requirement for framing of substantial questions of law in the present appeal.

13. In view of the discussion above, the judgement and decree

dated 19.02.1992 passed by the First Appellate Court cannot be sustained and the same is accordingly set aside. The present regular second appeal is allowed. The judgement and decree dated 12.05.1990 passed by the Trial Court is restored and the suit of the plaintiff-respondent stands dismissed. Pending applications, if any, also stand disposed off.

07.06.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO