IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.282 of 1994 (O&M)
Date of Order:06.03.2024

Balwan Singh

.Appellant

Versus

Shanti Devi and others **..Respondents**

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: **Mr. Ashish Aggarwal, Sr. Advocate, with**
Mr. Jangjit Dahiya, Advocate
Ms. Aashna Aggarwal, Advocate
Mr. Vishal Pundir, Advocate, for the appellant.

Mr. Jitender Malik, Advocate, for the respondents.

ANIL KSHETARPAL, J

1. This is the defendant's second appeal against the judgment and decree passed by the First Appellate Court which in turn has reversed the judgment and decree passed by the trial court.

2. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed

3. A family tree to show inter-se relationship between the parties is drawn as under:-

Yad Ram
|
Paras Ram (son)
|

|
Balwan Singh(son)
Defendant-appellant
|

| | |
Shani Devi (plaintiffs) | Santra Devi (respondents herein) | Krishna Devi

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4. The plaintiffs filed a suit for grant of decree of declaration that they are owners to the extent of 3/4th share in the property left behind by their father, who died 40 days ago. In other words, the plaintiffs claim the property on the basis of natural succession while claiming that the alleged Will is fictitious, bogus, invalid and not binding on the rights of the plaintiffs. The plaintiffs also asserted that the parties are 'Jats' and follow custom in matters of property.

5. The defendant, while contesting the suit submitted that Sh. Paras Ram bequeathed the entire property in his favour by a registered Will dated 04.06.1984.

3. In order to prove the Will, the defendant appeared as DW1 and examined both the attesting witnesses, namely, DW2-Ram Singh and DW3-Mehar Singh, besides examining DW4-Rajbir Singh, the scribe.

4. On behalf of the plaintiff, Smt. Krishna Devi, plaintiff no.2, appeared in evidence apart from examining PW2-Mohinder Singh and PW3-Hoshiara.

5. The trial court held that the execution of the Will has been proved in accordance with the Section 68 of the Indian Evidence Act, 1872. Consequently, the suit was dismissed. However, the First Appellate Court reversed the judgment and decree passed by the trial court on the following grounds:-

(1) The suit property is proved to be ancestral because the defendant in the previous suit admits it to be sold.

(2) DW1 while appearing in evidence admits that they being 'Jats' are being governed by the custom.

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(3) The attesting witnesses have not clearly deposed that the Will was attested in their presence.

(4) Sh. Balwan Singh was present when the Will was executed.

6. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book along with the requisitioned record.

7. The learned senior counsel representing the appellant while drawing the attention of the court to the depositions of the witnesses and the Will submits that the First Appellate Court has erred in reversing the judgment and decree passed by the trial court. He also relies upon the judgment passed by the Supreme Court in ***Sube Singh and another vs. Kanhiya Singh and others, 1964(2) SCR, 899***, to contend that amongst the 'Jat community' belonging to district Rohtak, the agricultural ancestral land can be alienated for consideration.

8. On the other hand, the learned counsel representing the respondents contends that the defendant has not asserted that the Will was executed in lieu of the service rendered by Sh. Paras Ram and it shall be noted here that in the year 1983, the defendant filed a suit against his father which was subsequently withdrawn. In the aforesaid suit, the defendant had admitted that the property is a Joint Hindu Family property. He further submitted that the stamp paper used for the execution of the Will was purchased on 17.05.1984, whereas the Will was executed and registered on 04.06.1984. He submits that at the relevant time, Sh. Paras Ram had fractured his Hip.

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9. This court has analyzed, considered and evaluated the submissions of the learned counsel representing the parties.

10. The original Will is 'Ex.D1' on the record of the trial Court. It has been scribed on revenue stamp papers worth twenty five paise each. These stamp papers were purchased on 17.05.1984. The recital of the Will runs on both the sheets of papers. On the first page of the Will, Sh. Paras Ram has signed as well as thumb marked the Will on the left hand margin. He has also signed and thumb marked upon the small correction which was carried out on the first page. The second page is also thumb marked by the executant as well as both the attesting witnesses. On the reverse side of the first page, there is an endorsement made by the Registrar. The aforesaid endorsement is signed at two different places by Sh. Paras Ram and has been thumb marked once. Both the attesting witnesses have also thumb marked the Will in the presence of the Registrar. In order to prove the Will, both the attesting witnesses, namely, Sh. Ram Singh, Lambardar, and Sh. Mehar Singh have testified in the Court. DW4-Sh. Rajbir Singh, the scribe has also been examined. He has brought the summoned record. It has been stated that Sh. Paras Ram had thumb marked and signed in his register. Thus, the requirement of Section 68 of the Indian Evidence Act, 1872, with respect to authenticity and proving of Will stands fulfilled.

11. As would be evident from the family tree, the appellant was the only son of Sh. Balwan Singh. Sh. Balwan Singh while executing the Will has recited that he has already married his three daughters and has given them sufficient gifts and spent amount on their marriage and he has no desire to give anything further to his daughters. Hence, the testator while executing the Will has disclosed the reasons for excluding his daughters.

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All the three daughters are married and are living in some other villages along with the family of their respective in-laws.

12. The First Appellate Court has also erred while observing that the property being ancestral could not be willed away. In fact, the Supreme Court after examining the case relating to 'Jats' of District Rohtak concluded that there is no restriction prevalent in the said community that bars the 'Jats' to transfer the property. Moreover, in this case, the property has been bequeathed and not transferred. It has been bequeathed in favour of male progeny while excluding the daughters. Furthermore, the plaintiffs are required to plead and prove custom. They have miserably failed to do that. In such circumstances, the custom which has been recognized by the Courts can be followed.

13. The next reason assigned by the First Appellate Court is with regard to presence of Sh. Balwan Singh. It shall be noted here that the plaintiffs have not led any evidence to prove that Sh. Balwan Singh influenced his father while executing the Will. Both the attesting witnesses have appeared in evidence. The learned counsel representing the plaintiffs have not suggested to both the attesting witnesses that the Will was executed by Sh. Paras Ram under the influence of his son Sh. Balwan Singh. As already noticed, the Will is a registered Will. It has been attesed by the Lambardar as well as another respectable person of the village. The plaintiffs have not led any evidence to prove that it is not signed or thumb marked by Sh.Paras Ram.

14. With respect to the argument of the learned counsel representing the respondent that the stamp paper was purchased on 17.05.1984, and the Will was executed on 04.06.1984, it may be noted that

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2024.03.19 09:22
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it is not the case of the defendants that Sh. Paras Ram himself purchased the stamp papers. The reverse side of the first page of the Will, Ex.D1, only proves that the stamp paper was purchased on 17.05.1984. The endorsement with respect to purchase of the stamp papers is not signed or thumb marked by Sh. Paras Ram. Sh. Paras Ram remained alive for a period of more than 4 years after the execution of the Will as he died on 23.09.1988. He never revoked the Will even after being alive for a period of 4 years after the execution of Will.

15. Keeping in view the aforesaid facts and discussion, this court is left with no other choice but to reverse the judgment and decree passed by the First Appellate Court. Hence, the appeal is accepted. The judgment and decree passed by the First Appellate Court is set aside and that of the trial court is restored.

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

March 06, 2024 **(ANIL KSHETARPAL)**
nt **JUDGE**

Whether speaking/reasoned :YES/NO
Whether reportable :YES/NO

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