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

RSA-2007-2022 (O&M)

Date of Decision : 15.07.2025

Madan Lal

... Appellant(s)

Versus

Surjit Singh & Anr

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Munish Puri, Advocate for the appellant.

ALKA SARIN, J. (Oral)

CM-6988-C-2022

1. For the reasons mentioned therein, the application seeking condonation of delay of 89 days in refiling the appeal is allowed and the delay of 89 days in refiling the appeal is condoned.

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2. The present regular second appeal has been filed by the defendant-appellant challenging the judgments and decrees dated 17.07.2018 and 16.11.2019 passed by the Trial Court and the First Appellate Court, respectively.

3. Briefly stated the facts relevant to the present *lis* are that the plaintiff-respondents herein filed a suit for declaration to the effect that the plaintiff-respondents and the defendant-appellant are owners in possession to the extent of 1/3rd share each in the estate of the deceased Bishan Dass (grandfather of the plaintiff-respondents and father of the defendant-appellant) i.e. 1/3rd each in the land measuring 29 kanals 5 marlas

viz: (i) 0-11 marlas being $\frac{1}{2}$ share of bearing khewat No.183/162 khatauni No.328 khasra No.110/1 (1-2); (ii) 24 kanals 12 marlas bearing khewat No. 181/160 Khatauni No. 326 khasra No. 14R/21(9-16) 16R/16/2/2 (2-5), 16R/24/1/2 90-4), 16R/24/2(1-8), 18R/4 (2-1), 18R/5 (8-0), 20R/1/1 (0-18); (iii) 0-2 marlas being $\frac{1}{2}$ share of 0-4 Marlas bearing khewat No.182/161 Khatauni No.327 Khasra No.14R/26 (04); (iv) 4 kanals being $\frac{1}{2}$ share in 8 kanals bearing khewat No.184/163 khatuni No.332 khasra No.19R/1 (8-0) situated in Village Balsua Hadbast No.190, Tehsil and District Pathankot as entered in jamabandi for the year 2007-2008, on the basis of the registered Will dated 05.04.1994, registered with Sub Registrar, Pathankot at document No.3 Bahi No.3 dated 05.04.1994 executed by Bishan Dass in favour of the plaintiff-respondents and the defendant-appellant to the extent of $\frac{1}{3}$ rd share each. It was further the case set up that the mutation of inheritance No.2261 of Bishan Dass had been sanctioned in favour of the plaintiff-respondents to the extent of $\frac{1}{2}$ share and $\frac{1}{2}$ share in favour of the defendant-appellant, which was illegal, null and void and not binding on the rights of the plaintiff-respondents. The plaintiff-respondents also set up a Will dated 05.04.1994.

4. The defendant-appellant herein raised various preliminary objections regarding maintainability and there being no cause of action. The execution of the Will dated 05.04.1994 was admitted. It was further stated in the written statement that mutation No.2261 was absolutely correct and rightly $\frac{1}{2}$ share had been given to the plaintiff-respondents jointly and $\frac{1}{2}$ share to the defendant-appellant herein.

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

- (1) Whether the plaintiffs are entitled to declaration as prayed for ? OPP
- (2) Whether the plaintiffs are entitled to decree of permanent injunction as prayed for ? OPP
- (3) Whether the suit is not maintainable in the present form ? OPD
- (4) Whether plaintiff has no cause of action to file the present suit ? OPD
- (5) Relief.

6. The Trial Court vide judgment and decree dated 17.07.2018 decreed the suit of the plaintiff-respondents to the effect that the plaintiff-respondents were held entitled to 1/3rd share each by virtue of the Will dated 05.04.1994 (Ex.P3) and the defendant-appellant herein was restrained from causing any interference and dispossessing the plaintiff-respondents from any part of the suit land. Mutation No.2261 (Ex.P2) was held to be incorrect and was directed to be corrected or to be decided afresh keeping in view the conclusions. Aggrieved by the same, an appeal was preferred by the defendant-appellant herein which appeal was also dismissed by the First Appellate Court vide judgment and decree dated 16.11.2019. Hence, the present regular second appeal.

7. Learned counsel for the defendant-appellant would contend that the Will dated 05.04.1994 (Ex.P3) executed by the father of the defendant-appellant and grandfather of the plaintiff-respondents is an admitted document, however, the issue is regarding the interpretation of the Will. Learned counsel would further contend that both the Courts have wrongly

interpreted that the Will gave $\frac{1}{3}$ rd share each to the defendant-appellant and the plaintiff-respondents. It is further the contention that the only intention of the Testator while executing the Will was to oust the daughters and it was never his intention that $\frac{1}{3}$ rd share should be given to both the grandchildren (plaintiff-respondents) and $\frac{1}{3}$ rd share to the defendant-appellant, rather $\frac{1}{2}$ share of the property was to devolve upon the defendant-appellant and $\frac{1}{2}$ share on the plaintiff-respondents jointly. It is further the contention that since the plaintiff-respondents are the sons of Ram who was son of Bishan Dass and, therefore, it was the intention of the Testator to divide his property between his two sons i.e. Madal Lal (defendant-appellant herein) and Ram (father of the plaintiff-respondents) and, therefore, the property would have gone $\frac{1}{2}$ share each to both his sons.

8. I have heard the leaned counsel for the defendant-appellant.

9. In the present case, the Will dated 05.04.1994 (Ex.P3) executed by Bishan Dass son of Gopal Dass is not in dispute. However, the interpretation of the Will is being disputed by the defendant-appellant.

10. Hon'ble Supreme Court in the case of **Bhagwan Krishan Gupta Vs. Prabha Gupta & Ors [2009(11) SCC 33]** has held as under :

"19. When there is a family settlement, evidently, technicalities in the matter of construction should not be insisted upon. The effect of a family settlement fell for consideration in Ramdev Food Products (P) Ltd. v. Arvindbhai Rambhai Patel and Others [2006(8) SCC 726], wherein it was categorically held :

"The MoU, for the purpose of these appeals, may be treated to be a family settlement. It is, however, well

known that the intention of the parties to an instrument must be gathered from the terms thereof examined in the light of the surrounding circumstances (See Sohan Lal Naraindar v. Laxmidas Rahgunath).

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We may proceed on the basis that the MoU answers the principles of family settlement having regard to the fact that the same was actuated by a desire to resolve the disputes and the courts would not easily disturb them as has been held in S. Shanmugam Pillai v. K. Shanmugam Pillai, Kale v. Dy. Director of Consolidation and Hari Shankar Singhania v. Gaur Hari Singhania."

Thus, if family settlement in relation to the property in question was possible, in our opinion, the doctrine of 'arm chair' rule of construction was applicable.

In Anil Kak v. Kumari Sharada Raje & Ors., 2008(2) RCR (Civil) 918 : 2008(3) RAJ 420 : [(2008)7 SCC 695], this Court held :

37. The testator's intention is collected from a consideration of the whole will and not from a part of it. If two parts of the same will are wholly irreconcilable, the court of law would not be in a position to come to a finding that the will dated 4-11-1992 could be given effect to irrespective of the appendices. In construing a will, no doubt all possible contingencies are required to be taken into consideration. Even if a part is invalid, the entire document need not be invalidated, only if it forms a severable part (See Bajrang Factory Ltd. v. University of Calcutta.)

In Narendra Gopal Vidyarthi v. Rajat Vidyarthi [2008(16) SCALE 122], this Court held :

"29. The very fact that the testator categorically stated that the extent of title in the property will depend upon the amount of additional contribution required to be made from the fund of Vidyarthi and Sons itself is an indication to show that his wish was that title should vest in the beneficiaries to the extent of the property which represented the amount of Rs. 30,000/- out of the total amount of consideration required to acquire the same. There cannot be any doubt whatsoever that his intention also was that the entire cash may not be paid to Chandramukhi as she was of gullible character. She could be made to part therewith by any other person by sweet words. A precaution was, therefore, required to be taken. The amount was required to be spent wisely. The amount which was required for their maintenance and education of appellant whether derived from the interest or from the rental only was to be handed over. It is only for the aforementioned limited purpose, the trust was created. The sole beneficiary of the trust, in our opinion, was merely the appellant and his mother. It may be true that the property was purchased in the name of the testator himself. The High Court commented that the same could have been done in the name of the appellant and his mother or at least the purchase could have been a joint one. But the Will is required to be construed on the basis of the terms used therein and not otherwise."

Principles of construction of a Will, inter alia, are laid

down in Sections 74 and 82 of the Indian Succession Act. It is well settled that the Will should be read as a whole and the surrounding circumstances may be given effect to for the purpose of ascertaining the intention of the testator from the words used and the surrounding circumstances wherefor the Court will put itself in the armchair of the testator. We, therefore, do not find any legal infirmity in the impugned judgment.”

11. The Will, which has been appended with the present appeal, reveals that it simply states as under :

“I, Bishan Dass son of Gopal Dass son of Shero, is resident of village Balsuan, Tehsil Pathankot, aged about 65 years. I am owner of property i.e. a house, situated at village Balsuan, Tehsil Pathankot. I am old aged. Life is matter of uncertainty. It is often seen that property of deceased is destroyed in litigation after death. Hence it is necessary for me to execute this Will. My son Madan Lal & two grandsons Surjit Singh & Harjit Singh sons of Sri Ram are rendering me all services. I am satisfied with their services and do hereby execute this Will in lieu of their services that during my lifetime, I will remain owner in possession of my entire moveable & immoveable property. After my death, my son Madan Lal & two grandsons Surjit Singh & Harjit Singh sons of Sri Ram will become owner of my entire moveable & immoveable property. I have got two daughters namely Darshna Devi & Usha Kumari. Darshna Devi is married and she has been given sufficient dowry. I will also perform marriage of my daughter Usha Kumari during my lifetime. In case I am pre-deceased, her marriage will be performed by the persons, in whose favour I am executing this Will. No one else has any connection whatsoever with my property. This

is my first & last Will. Hence this Will is got executed in presence of witnesses, gone through, admitted to be correct.”

12. The Will dated 05.04.1994 (Ex.P3), contents of which have been reproduced hereinabove, only states that after his death his son Madan Lal and two grandsons i.e. Surjit Singh & Harjit Singh sons of Ram would become owner of the entire moveable or immoveable property. There is not even a whisper that the property has to be divided as contended by the learned counsel for the defendant-appellant. Rather, on a plain reading of the Will it is apparent that the property is to be divided amongst three heirs i.e. Madan Lal (defendant-appellant herein) and two grandsons Surjit Singh and Harjit Singh sons of Ram (plaintiff-respondents herein). The intention of the Testator can only be seen from the contents of the Will and on a plain reading, no other intention can be derived.

13. Learned counsel for the defendant-appellant has referred to the statement of the attesting witness to contend that the witness has stated the intention of the Testator and, therefore, both the Courts erred in ignoring the said statement of Tarsem Lal, Numberdar (PW3). The said argument is sans any merit. An attesting witness testifies to prove the due execution of the Will. The attesting witness possibly cannot depose regarding the true intent or intention of the Testator which has to be determined only from a perusal of the contents of the Will read as a whole.

14. In view of the above, no fault can be found with the judgments and decrees passed by both the Courts. No question of law, much less any substantial question of law, arises in the present case. The appeal being devoid

of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

15.07.2025
Yogesh Sharma

(ALKA SARIN)
JUDGE

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