



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Reserved on: 24.02.2025
Pronounced on: 01.03.2025

I. RSA-5872-2019 (O&M)

RITA DATTA

.... APPELLANT

Vs.

RAJIV KUMAR

.... RESPONDENT

II. CWP-11564-2021

SMT. REETA DATTA SINCE DECEASED
THROUGH LRS

.... PETITIONER

Vs.

STATE OF HARYANA AND OTHERS

.... RESPONDENTS

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Argued by:- Mr. Ashwani Talwar, Advocate,
for the appellant in RSA-5872-2019

None for the petitioner in CWP-11564-2021

Mr. S.K. Garg Narwana, Sr. Advocate, with
Mr. Vishal Garg Narwana, Advocate, and
Mr. Nitin Sachdeva, Advocate for the respondent.

DEEPAK GUPTA, J.

Sole plaintiff - Rita Datta (*appellant through her LRs herein*) and sole defendant Rajiv Kumar (*respondent herein*) are real sister and brother. They are natural legal heirs of Smt. Prem Mehta (wife of late Sh. Tilak Raj), who had expired on 25.02.2003. Dispute pertains to the estate left behind by said Smt. Prem Mehta. Plaintiff claimed exclusive ownership and possession to the suit property on the basis of a Will dated 06.09.2001. She sought

decree of declaration to that effect besides that of permanent injunction restrain the defendant from removing the trees standing in the suit land, changing the nature of the suit land or to alienate the same in any manner, and further from interfering in her possession.

2. Defendant disputed the claim of the plaintiff and alleged the Will set up by the plaintiff to be forged and fabricated document.

3. After framing necessary issues and taking evidence on record, the trial Court discarded the Will set up by the plaintiff and partly decreed the suit to the extent that she was declared to be in joint possession of the suit land along with defendant, to the extent of 1/2 share. The relief sought by the plaintiff claiming absolute ownership over the suit land based upon the Will dated 06.09.2001 was declined. The judgment dated 06.02.2014 passed by the trial Court to this effect was upheld by the First Appellate Court vide judgment dated 20.09.2019 in the appeal filed by the plaintiff.

4. Against the aforesaid concurrent findings, plaintiff has approached this Court by way of the present Regular Second Appeal.

5. Here itself, it may be noticed that based upon the Will dated 06.09.2001, mutation No.827 was sanctioned by the Assistant Collector 1st Grade on 12.06.2008. However, the appeal filed by the respondent was accepted and the order of Assistant Collector, sanctioning mutation, was set aside vide order dated 24.01.2013. Revision preferred by the appellant was dismissed by the Divisional Commissioner on 03.04.2019 and the further revision before the Financial Commissioner met with the same fate as the same was dismissed on 18.03.2021.

6. By way of CWP-11564-2021, petitioner-Rita Datta through her LRs prayed for setting aside the orders dated 18.03.2021 passed by Id. Financial Commissioner, Haryana, order dated 24.01.2013 passed by the District Collector, Yamuna Nagar and the order dated 03.04.2019 passed by the Commissioner, Ambala Division Ambala and prayed for restoring the

order dated 12.06.2008 of Assistant Collector Grade-I, Yamuna Nagar.

7. It is contended by Id. counsel for the appellant before this Court that the Courts below have failed to appreciate the evidence on record in right perspective and that it is not even necessary that testator must sign the Will in presence of attesting witnesses and that the two attesting witnesses must put their signatures on the Will simultaneously in the presence of each other and the testator. In support of this submission, learned counsel has relied upon a decision of Hon'ble Supreme Court rendered in ***Ganesan (D) Through Lrs Vs. Kalanjiam and others, 2019(3) RCR (Civil) 843.***

8. Refuting the aforesaid contention, Id. senior counsel for the respondent points out that the Courts below have given detailed reasons so as to hold that Will was not even executed by Smt. Prem Mehta and was not proved in accordance with law. Apart from this, numerous suspicious circumstances surrounding the Will have been noticed by the Courts below and so, the Will has been rightly discarded. Id. Senior counsel submits that there is no scope for interference in the concurrent findings of facts recorded by the Courts below.

9. I have considered submissions of both the sides and have appraised the record.

10. Will dated 06.09.2001 (*Ex.P4*) is purported to be attested by Smt. Tripta Datta and Shujjatulla Khan, Advocate. To prove the due execution of the Will, plaintiff relied upon the testimony of one of the attesting witnesses namely Tripta Datta PW3. After going through the testimony of this witness, it has been observed by the Appellate Court that it appeared that this witness was not even present at the time of execution of the Will in question and so, she failed to prove the due execution of the Will. Said observations of the First Appellate Court are found to be correct, as it is noticed that PW3- Tripta Datta was unable to disclose as to who had typed the Will, from where it was got typed, whether it was prepared on white paper or green paper or on plain paper or on a stamp paper or as to how many signatures she or other

attesting witness had appended on the Will. She was not even aware about the contents of the Will. Not only this, it was noticed that though in her affidavit tendered as examination-in-chief, PW3 stated that Will was got typed by testator Prem Lata @ Prem Mehta in English language and she had put her signature after understanding the contents thereof in her presence and that of Shujjatulla Khan, but during cross-examination, she pleaded ignorance about these facts. Not only this, it was found that PW3-Tripta Datta was an interested witness inasmuch as she had taken the daughter of plaintiff-appellant in adoption.

11. It has been rightly observed by the Appellate Court that attesting witness is expected at least to know the subject matter of the Will, the language in which it was typed, number of signatures appended on the Will, but in this case PW3 failed to answer any of these questions and as such, her testimony could not be relied.

12. Apart from the fact that the attesting witness examined by the plaintiff could not prove the due execution of the Will, it was further noticed that respondent-defendant had specifically denied the signature of Prem Lata @ Prem Mehta on the Will and to prove this contention, he not only examined private handwriting and fingerprint expert DW11 Yashpal Chand Jain, but further examined DW10 Gulshan Rai, Deputy Director, Forensic Science Laboratory, Madhuban and DW1-Sh. T. Joshi, Assistant Government Examiner. In their consistent reports, it was found that standard signature of the testator did not match with the signature on the Will. In the light of testimony of the government handwriting and fingerprint expert, the testimony of PW4-N.K. Jain, the expert examined by the plaintiff, was rightly ignored. Thus, it is concluded by the Courts below that Will dated 06.09.2001 (Ex.P4) did not bear the signature of Prem Lata @ Prem Mehta and as such, plaintiff could not claim to be absolute owner of the suit property on the basis of said Will.

13. Although apart from above, the appellate Court has also noticed

numerous suspicious circumstances surrounding the execution of the Will, but this Court does not find any necessity to discuss the same, once it has been found that Will itself is not found to have been executed by Prem Mehta, the mother of the parties, whose estate is the subject matter of the dispute.

14. This Court does not find any ground whatsoever to differ with the concurrent findings of facts as recorded by the Courts below, calling for any interference. The citation relied by counsel for the appellant is not at all applicable to the facts of the present case.

15. Consequently, this Court does not find any merit in the appeal i.e. RSA-5872-2019, as there is neither any illegality nor perversity therein. As such, RSA-5872-2019 is hereby dismissed.

16. Since Will of Prem Mehta is itself found to be not proved in accordance with law, therefore, there is no merit in CWP-11564-2021, assailing the orders of the Collector, Divisional Commissioner and Financial Commissioner, discarding the Will and setting aside the order dated 12.06.2008 passed by the Assistant Collector, 1st Grade, Yamuna Nagar on the basis of Will. As such, CWP-11564-2021 is also hereby dismissed.

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

01.03.2025

Vivek

(DEEPAK GUPTA)

JUDGE

Whether speaking/reasoned?	Yes
Whether reportable?	Yes