
(2019) 10 SHI CK 0111

High Court Of Himachal Pradesh

Case No: Regular Second Appeal No. 621 Of 2012

Bansi Lal And Others

APPELLANT

Vs

Ram

RESPONDENT

Date of Decision: Oct. 24, 2019

Acts Referred:

- Indian Succession Act, 1925 - Section 63

Citation: (2019) 10 SHI CK 0111

Hon'ble Judges: Sureshwar Thakur, J

Bench: Single Bench

Advocate: K.D. Sood, Sukrit Sood, Bhupender Gupta, Ajeet Jaswal

Final Decision: Allowed

Judgement

Sureshwar Thakur, J

1. The plaintiff's suit for rendition, of, a decree, of, declaration, for, setting aside, the, challenged testamentary disposition, executed on 15.7.2004,

by the deceased testator, one Dileshwari Devi, vis-à-vis defendants No. 1 and 2, and, also for rendition, of, a decree, of, permanent prohibitory

injunction, vis-à-vis, the suit land, and, against the defendants, hence stood dismissed, by, the learned trial Judge. In an appeal carried thereagainst, by,

the aggrieved therefrom defendants, hence before the learned first appellate Court, the, latter Court rather allowed the plaintiffs' appeal. The

aggrieved therefrom defendants, hence, for concerting, to, beget reversal, of, the verdict, recorded by the learned first appellate Court, upon, Civil

Appeal No. 23 of 2010, hence institute thereagainst, the, extant second appeal, before this Court.

2. The instant appeal, stood admitted, by this Court on, the hereinafter extracted substantial questions of law:

(i) Whether the findings of the Court below are perverse, based upon mis-reading of oral and documentary evidence, pleadings of parties, basic

document of title exhibit DW2/A the Will executed by Smt. Daleshwari Devi which had been proved by witnesses DW-2, DW-3 and DW-4.

(ii) Whether the learned District Judge has ignored the admissible evidence and the findings that the Will Exhibit DW2/A wasnot duly executed under

Section 63 of the Indian Succession Act is sustainable in law when on proper construction of the word "attested" in Section 63 of the Indian

Succession Act, the three witnesses, the scribe, attesting witnesses and identifiers were all to be held as witnesses who had duly proved the execution

of the Will.

(iii) Whether in the absence of particularly of undue influence, fraud and mis-representation and evidence on record, the findings that the will was

shrouded by suspicious circumstances when the same had duly been explained, the findings of the District Judge to the contrary reversing the

judgment of the trial Court are sustainable in law.

3. Ext. DW2/A, is, a registered testamentary disposition, executed by the deceased testator, one Dileshwari Devi, vis-à-vis, defendants No. 1 and 2.

However, for, the afore executed registered testamentary disposition, rather to assume an aura of validity, hence enjoined upon the plaintiffs, to,

through, adducing cogent evidence, hence ensure, qua the, completest satiation becoming meted, vis-à-vis, the statutory parameters, as, enshrined, in,

Section 63, of, the Indian Succession Act, provisions whereof, stand extracted hereinafter:

"63. Execution of unprivileged Wills_ Every testator, not being a soldier employed in an expedition or engaged in actual warfare [for an airman so

employed or engaged,] or a mariner at seal, shall execute his Will according to the following rules:-

(a) The testator shall sign or shall affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction.

(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended

thereby to given effect to the writing as a Will.

(c) The Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will or has been some other

person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgement of his

signature or mark, or of the signature of such other person; and each of the witnesses shall sign the Will in the presence of the testator, but it shall not

be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.Ã¢â¬ necessarily, the

plaintiffs are statutorily enjoined, to, prove qua, (i) at the phase prior, to, the registration of Ext. DW2/A, the latter, becoming proved, hence by

marginal witnesses thereto, qua it, with the deceased testator, being thereat, possessed hence, with the fullest awakened cognitive faculties or compos-

mentis, hers, in their respective presence(s), embossing her marking(s) thereon, and, thereafter, each, of, the marginal witnesses thereto, were

enjoined, to, make unequivocal testification(s), qua each, in the presence of the deceased testator, making thereon theirs respective thumb

impression(s).

4. Mast Ram, the, described, in, Ext. DW2/A, to be a marginal witness, vis-Ãf -vis, the execution, of, Ext. DW2/A, though, proceeds to make an un-

eroded testification, in his deposition, as, stands recorded, before the learned trial Judge, vis-Ãf -vis, a) the deceased testator, in his presence, and, after

hersÃ¢â¬ rather after fully comprehending, all, the contents, borne therein, hence making her markings thereon, and, besides (b) his also further

deposing, vis-à-vis, in presence, of, the deceased testator, his hence making his markings thereon. However, DW-4 one Brikhu Ram, who, alike PW-

3, one Mast Ram, though has deposed rather with the fullest assured interse corroboration, vis-à-vis, the afore testified bespeaking(s), made by PW-

3, one Mast Ram, (c) however, the counsel, for, the aggrieved plaintiff(s) contends, that, merely for Brikhu Ram, becoming described in Ext. DW2/A,

to be, an identifier, of, the deceased testator, thereupon (d) the afore extracted statutory parameters, vis-à-vis, (e) in contemporaneity, qua, the

execution of Ext. DW2/A, it becoming compulsorily witnessed, by, two witnesses, described therein, to be, the apt marginal witnesses thereto, rather

becoming infracted, and, hence, for, evident breach, of, the apposite mandatory statutory enshrining(s), the, propounders, of, Ext. DW2/A, failing to

establish qua the afore testamentary disposition, becoming proved, to be, validly and, duly executed.

5. However, for the reasons assigned hereinafter, the afore submission, falters, as the reasoning(s), adopted by the learned first appellate Court, to,

hence stricto sensu construe, the, description, in, Ext. DW2/A, of, one Brikhu Ram, and, who testified as DW-4, before the learned trial Judge, as, an

identifier, of, the deceased testator, and, naturally, not, as a marginal witness, qua execution, of, Ext. DW2/A, rather suffers, from, an inherent legal

fallacy, as (a) the learned first appellate Court has failed to bear, in mind, that de hors the description in Ext. DW2/A, qua Brikhu Ram, being an

identifier, of, the deceased testator, perse not garnering, hence, any conclusion, qua his not becoming, a, marginal witness, vis-à-vis, execution, of,

Ext. DW2/A, (b) rather it was imperative, for, the learned trial Judge, to, gather from, the, evidence, existing on record, whether, he, at the relevant

time, carried the requisite animo attestendi, (c) whereupon the afore description would loose significance, and rather his becoming construable, to be, a

marginal witness, of, Ext. DW2/A. The reasons, for, drawing, a credible inference, vis-à-vis, one Brikhu Ram, though described, in Ext. DW2/A, as

an identifier, of, the deceased testator, rather carrying, the, requisite animo attestendi, is, marshable from the scribe, of Ext. DW2/A, upon, stepping

into the witness box, as DW-2, making a testification, vis-Àf -vis, the afore Brikhu Ram, though described, in Ext. DW2/A, as, an identifier, of the

deceased testator, yet, his also being a marginal witness, vis-Àf -vis, Ext. DW2/A, and, when DW-4 also makes a testification, qua hence at the

relevant phase, his being possessed with the requisite animus attestendi, and, also makes credible apt statutory bespeaking(s) qua therewith, (d)

thereupon merely, upon, affirmative answers being purveyed by DW-2, in his cross-examination, vis-Àf -vis, affirmative suggestion(s), becoming meted

to him, qua the scribed description, of, one Brikhu Ram, being rather aptly made, in, Ext. DW2/A (e) yet cannot outweigh or countervail, the,

testification rendered, by, DW-4, one Brikhu Ram, though described as Ext. DW2/A, to, be, an identifier of the deceased testator, (f) given his

unequivocally, and, unrebuttedly deposing qua, his, at the relevant phase, sighting the deceased testator, to, make his markings thereon, and, also his

deposing qua his, in the presence, of, the deceased testator, his also making his markings thereon. Since, reiteratedly the afore testification remained

un-eroded, and, hence thereupon, merely for DW-4, Brikhu Ram, becoming described in Ext. DW2/A, to be the identifier, of, the deceased testator,

cannot preclude this Court, to, construe him, to, be the apt marginal witness, (g) given reiteratedly, his carrying, at the relevant phase, the, apposite

animo attestendi. Furtheronwards, Ext. DW2/A, is, a registered testamentary disposition, hence carrying thereon(s), rather the thereon(s) made

apposite sealed, and, signed endorsement(s), hence, by the registering Officer concerned, and, when the afore statutorily made, sealed signed

endorsement(s), hence remained un-eroded, vis-Àf -vis, its vigor, (g) thereupon also, with, their occurring no contest, vis-Àf -vis, the authenticity, of, the

markings, as, are made thereon, by the deceased testator, besides by the marginal witnesses, and, of, the identifier, of, the deceased testator, (h)

thereupon, the prima-donna factum, of, Ext. DW2/A, becoming executed, by, the deceased testator, hence with hers, both at the pre-registration stage,

and, in contemporaneity, vis-Àf -vis, its registration, hence, possessing, the, requisite compos-mentis, and, also hers being in a fully awakened cognitive

state, of, mind, rather becomes fully established, by, the afore unrebutted cogent evidence.

6. Be that as it may, with the completest assured proof becoming adduced by the plaintiff, vis-Àf -vis, the valid, and, due execution of Ext. DW2/A,

thereupon suspicious circumstance(s) of, any, comprised, in the plaintiff becoming dis-inherited, does not, carry any weight, and, is, amenable for

rejection. The substantial questions of law, are, answered accordingly.

7. There is merit in the instant appeal, and, the same is allowed. The impugned judgment, pronounced by the learned District Judge, Mandi, upon Civil

Appeal No. 23 of 2010, is, quashed and set aside. All, the pending application(s), if any, are also disposed of.