
(1997) 04 P&H CK 0011

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 3059 of 1979

Babu Ram

APPELLANT

Vs

Ram Sarup and Others

RESPONDENT

Date of Decision: April 11, 1997

Acts Referred:

- Succession Act, 1925 - Section 63

Citation: (1998) 1 CivCC 38 : (1998) 118 PLR 290 : (1997) 4 RCR(Civil) 327

Hon'ble Judges: H.S. Bedi, J

Bench: Single Bench

Advocate: C.B. Goel, for the Appellant; V.K. Jain and Ramesh Kumar Sharma, for the Respondent

Final Decision: Dismissed

Judgement

H.S. Bedi, J.

This is a plaintiff's second appeal.

2. According to the plaintiff Babu Ram, his father Amar Nath owned considerable property, moveable and Immovable and it had been partitioned between his sons. The partition aforesaid, however, did not affect the agricultural property which, as per the allegations of the plaintiff, was willed away by the said Amar Nath vide a valid will dated 25.1.1967. As Amar Nath was apparently not keeping well, he instructed his son Ram Sarup defendant/respondent No. 1 to move an application before the Sub Registrar, for registration of the will at home but the latter returned it for presentation on some other day. It is stated that Amar Nath died on 22nd February, 1967, before the will could be registered, though the will was registered after his death and the plaintiff/appellant had secured an entry of the mutation on the basis of the aforesaid Will.

3. Ultimately, however, the Assistant Collector, 1st Grade, ignored the same and mutation was entered with respect to all the legal heirs i.e. sons and daughters.

Aggrieved thereby, the present suit was filed by the plaintiff/appellant seeking a declaration that he was owner in possession of 2/5th share of agricultural land that had been bequeathed to him. The suit was contested by the defendant/respondent No. 1 Ram Sarup as also defendant No. 3 Misri Lal. They denied that any will had been executed by their father and if there was any will, the same had been executed by practising a fraud on him as he was not of sound disposing mind at the time of execution of the said will. Certain other objections were also taken which are not relevant for the disposal of the present appeal.

4. On the pleadings of the parties, the following issues were framed :-

1. Whether Amar Nath deceased executed any valid will as alleged?
2. Whether the suit is maintainable in the present form?
3. Whether the relief sought in the plaint is not correctly assessed for purposes of Court fee and jurisdiction?
4. Whether the plaintiff is estopped from bringing the suit?
5. Whether the defendants are entitled to special costs; if so how much?
6. Relief:

Issue No. 1 which is the crucial issue and the only one which needs to be decided in this appeal was held against the plaintiff and in favour of the defendant, whereas no arguments were addressed by the parties on Issues No. 2 to 5. The suit was, accordingly, dismissed. In appeal before the first Appellate Court, a challenge was made to Issue No. 1 only, The Court came to the conclusion that the will in question had not been proved as there appeared to be many flaws in its execution. The primary reliance by the appellant's counsel on the fact that an application had been made before the Sub Registrar on 25th January, 1967 for having the will registered was also not accepted on the ground that the said application had also not been proved and in any case even if the same was proved, did not support the case of the appellant as it had been put before the Sub Registrar on 27th January, 1967 and not on 25th January, 1967 as alleged by the plaintiff/appellant. The Court also noticed that a serious circumstance against the genuineness of the will was that there were no signatures or thumb impression of the executant Amar Nath and there was only one thumb impression on one corner of the last page of the will. The appeal was, accordingly, dismissed. Hence this Second Appeal at the instance of the aggrieved plaintiff.

5. I have gone through the judgment of the Courts below and also the record with the help of the learned counsel for the parties.

6. A bare perusal of the will indicates that it consists of four pages and whereas, the first page bears the alleged signatures of Amar Nath as also his thumb impression, the other three pages bear only his thumb impression. Mr. Goel, the learned

counsel for the appellant has, however, argued that this factor by itself proved the case of the plaintiff/appellant as it was his case that the testator Amar Nath was seriously ill and it was in that eventuality, that he could not sign his name and was, thereafter, compelled to put his thumb impression instead. To my mind, this argument cannot be accepted. The alleged signatures of Amar Nath on first page of the will which are a mere scrawl indicate not only his physical but perhaps even his mental incapacity.

7. There is yet another circumstance which to our mind goes to the root of the matter. Section 63 of the Indian Succession Act provides for the execution of unprivileged will and reads thus :-

"63. Execution of unprivileged wills- Every testator, not being a soldier employed in an expedition or engaged in actual warfare (or an airman so employed or engaged) or a mariner at sea, 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 give 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 seen 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 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".

8. Applying the provisions of the aforesaid section to the facts of the case, I am of the opinion that the execution of the will is not proved. Firstly, it is to be noted that the thumb impression of the testator on the last page of the will does not really indicate that it was so placed that it could appear that it was intended thereby to give effect to the writing as a will. Moreover, the will has not been attested by any witness whatsoever. Resultantly, the execution of the will is not proved.

9. For the reasons recorded above, there is no merit in this appeal and the same is dismissed.