
(2010) 04 P&H CK 0113

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Tripta Devi

APPELLANT

Vs

Ram Piari and Others

RESPONDENT

Date of Decision: April 30, 2010

Citation: (2010) 159 PLR 476

Hon'ble Judges: Mahesh Grover, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Mahesh Grover, J.

C.M. No. 5124-C of 2010

1. Allowed subject to all just exceptions and legal representatives of defendant-Harbans Lal (since deceased) are permitted to be brought on record.

R.S.A. No. 1698 of 2010 & C.M. No. 5123-C of 2010

2. The plaintiff is in Regular Second Appeal. She had filed a suit for declaration to the effect that she was exclusive owner in possession of the estate of late Shri Ramji Dass son of Rama, resident of village Salorah, District Hoshiarpur including the landed and house properties detailed in the head note of the plaint. A decree of permanent injunction was also sought as a consequential relief.

3. Ramji Dass was stated to have died on 10.8.1994. It was pleaded that the plaintiff and her husband used to take care of Ramji Dass and on account of this, he had bequeathed his entire properties in their favour vide Will dated 8.8.1994.

4. Harbans Lal and Tirath Ram son of Amar Nath, who were arrayed as defendant Nos. 1 & 2, disputed the aforesaid fact and set up a Will dated 5.8.1994 in their favour having been executed by Ramji Dass.

5. Sunder Pal, Ram Parshad and Ram Chander, who were impleaded as defendant Nos. 3 to 5, in their written statement, denied the Wills set up by the plaintiff and defendant Nos. 1 & 2 and averred that Ramji Dass had executed Will dated 6.8.1994 in their favour and that they were in possession of the entire properties left by him and mutations had accordingly been sanctioned. They alleged that above said two Wills were forged documents.

6. The essential issue arising from the pleadings of the parties was as to "whether the plaintiff is exclusive owner in possession of the estate of late Ramji Dass being his legal heir under Will dated 8.8.1994?"

7. Harbans Lal and Tirath Ram, who were impleaded as defendant Nos. 1 & 2 by the plaintiff in her suit, had also filed a suit for declaration and claimed right to the properties of Ramji Dass on the basis of the Will dated 5.8.1994. They had also prayed for setting aside the order dated 2.2.1995 passed by Assistant Collector Ist Grade, Dasuya in mutation proceedings being illegal, null & void and arbitrary.

8. The plaintiff and defendant Nos. 3 to 5, who were arrayed as defendants in the suit filed by Harbans Lal and Tirath Ram, had filed separate written statements and defended their respective Wills.

9. The crucial issue as raised in the suit of Harbans Lal and Tirath Ram was issue No. 5, which is extracted below:

5. Whether deceased Ramji Dass executed valid Will in favour of the defendants by cancelling Will in favour of the plaintiffs?

10. Both these suits were consolidated and on basis of the evidence brought on record, Civil Judge (Junior Division), Dasuya (hereinafter referred to as "the trial Court"), vide her judgment and decree dated 19.7.2005, concluded that the Wills set up by the plaintiff and defendant Nos. 3 to 5 were not worthy of credence, whereas the Will in favour of Harbans Lal and Tirath Ram was held to be genuine and a registered document. The suit of the plaintiff was, accordingly, dismissed and the claim of defendant Nos. 1 & 2, Harbans Lal and Tirath Ram, was decreed.

11. Feeling aggrieved, the plaintiff and defendant Nos. 3 to 5 filed two separate appeals which were dismissed by the Additional District Judge, Hoshiarpur (hereinafter described as "the first appellate Court") vide judgment and decree dated 3.12.2009.

12. In the Regular Second Appeal, learned Counsel for the plaintiff-appellant has contended that the findings recorded by the trial Court as well as by the first appellate Court are erroneous and are liable to be set aside. He further contended that there is sufficient material on record to lend credence to Will dated 8.8.1994 in favour of the plaintiff and the same has not been appreciated by the Courts below in a proper manner and, therefore, the impugned judgments deserve to be set aside.

13. I have considered the contentions of the learned Counsel for the appellant and have gone through the impugned judgments.

14. The plaintiff-appellant had claimed right to succeed to the estate of Ramji Dass on the basis of Will dated 8.8.1994 and, therefore, the only crucial question is as to whether this Will was a validly and genuinely executed document so as to confer right to succession upon her.

15. The evidence on record, if examined in the light of the aforesaid issue, revealed that the Will Exhibit P1 in favour of the plaintiff, was never scribed by a regular deed writer. PW1-Kashmiri Lal deposed that he is not a licensed deed writer; that there are two thumb impressions of Om Parkash-witness on Will Exhibit P1, but he was unable to point out as to why these two thumb impressions appeared. PW2-Nathe Khan, the attesting witness, also did not seem to know the testator-Ramji Dass. He could not tell as to whether the Will was scribed on the plain paper or a stamp paper. He even could not identify the photograph of Ramji Dass-testator.

16. These crucial pieces of evidence have rightly been appreciated by the Courts below while discarding the Will in favour of the plaintiff and there is no other material from where it can be inferred that the Will was supportive of her case.

17. Their Lordships of the Supreme Court in [Rur Singh \(D\) th. LRS. and Others Vs. Bachan Kaur](#), have held that the determination of the validity of a Will is a question of fact and it cannot be said that the same involves a substantial question of law.

18. In any eventuality, there is sufficient material to come to a conclusion that the Will set up by the plaintiff was not a genuine document and, therefore, the findings recorded by the Courts below deserve to be upheld.

19. Consequently, the appeal is held to be without any merit and is dismissed.

20. C.M. No. 5123-C of 2010 which has been moved for restraining the defendants from interfering with the possession of the plaintiff during the pendency of the appeal is also dismissed.