

(1987) 11 P&H CK 0010

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 1285 of 1978

Jiwan dass and Another

APPELLANT

Vs

Chaman Lal

RESPONDENT

Date of Decision: Nov. 9, 1987

Acts Referred:

- Hindu Succession Act, 1956 - Section 14(1)

Hon'ble Judges: M.S. Liberhan, J

Bench: Single Bench

Advocate: Ram Rang, for the Appellant; R.S. Mittal and Mr. N.K. Khosla, for the Respondent

Final Decision: Dismissed

Judgement

M.S. Liberhan, J.

The factual matrix giving rise to this appeal is that the Plaintiff filed a suit for declaration and possession of the property in dispute to the extent of one-third share. The Plaintiff and the Defendants were real brothers. Their father Shankar Dass executed a will dated 16.8.1960, registered on 9-12-1960, bequeathing the property in dispute on his death to his widow. It was provided in that will that on her death, the land in dispute would be taken by the brothers in equal shares, on payment of two year's produce to the sister equally. Shankar Dass died in December, 1963, and his widow Smt. Ram Ditti Bai died in 1968. Smt. Ram Ditti Bai executed a will in favour of the Defendants depriving the Plaintiff of his one-third share. The Plaintiff challenged the validity of the will by Smt. Ram Ditti Bai as not binding on him.

2. The Defendants accepted the execution of the will by Shankar Dass. It was inter alia, alleged that Smt Ram Ditti Bai was the absolute owner of the property in dispute under the will of Shankar Dass, alternatively she became absolute owner in view of Section 14(1) of the Hindu Succession Act, 1956. The Defendants further

claimed that Shankar Dass had during his lifetime gifted some land to the Defendants in equal shares vide gift deed dated 2-11-1961, and had handed over possession also. It was averred that their father had 5/6th share in House No. 7-242 and 1/6th share in the house belonging to Devi Dass, who had sold his share to the Defendants in equal shares and the remaining 5/6 share the house was gifted by Shankar Dass to the Defendants in equal shares. The Defendants further averred that the Plaintiff admitted the Defendants' claim as sole owners of the house in dispute vide an agreement dated 16-8-1960 and the will executed by Smt. Ram Ditti Bai on 27-3-1965, registered on 31.3.1965, was a perfectly valid and legal will, as she had absolute power to alienate the property.

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

1. Whether Ram Ditti widow of Shankar Dass has only life interest in the suit property? O.P.P.

2. Whether Ram Ditti made a valid will in favour of the Defendants? O.P.D.

3. Whether the suit is properly valued for purposes of court-fees and jurisdiction? O.P.P.

4. Whether the suit is not maintainable in the present form? O.P.D.

5. Whether the Plaintiff is estopped from filing the suit? O.P.D.

6. Whether the suit is time-barred? O.P.D.

7. Whether the Defendants are entitled to special costs?

The trial Court found that Smt. Ram Ditti Bai did execute the will, she was the absolute owner under the will executed by her husband Shankar Dass, the property in dispute was legally and validly bequeathed in favour of the Defendants, and the Plaintiff, had no right to the property in dispute. The trial Court interpreted the will. It was held, since Smt. Ram Ditti Bai had been described to be absolute owner and the lower part of it, providing for after her death, shall be void. Second part of the will being inconsistent with the first part of the will, the later shall be deemed to be void. After discussion, it was held that Smt. Ram Ditti Bai was absolute owner of the property in dispute and she could dispose of the same in any manner she liked, the will executed by her in favour of the Defendants was held to be valid and legal. Accordingly, the suit was dismissed.

4. The Plaintiff preferred an appeal. The lower appellate Court set aside the finding on issue No 1 and came to the conclusion that Smt. Ram Ditti Bai widow of Shankar Dass had only a life estate in the suit property, she could not bequeath the same. The judgment and decree of the trial Court was set aside and the suit was decreed.

5. The Defendants have challenged the judgment and decree of the lower appellate Court in this regular second appeal.

6. Learned Counsel for the Appellants contends that after reading the will of Shankar Dass dated 16.8.1980, it is obvious that he had bequeathed his interest absolutely in favour of Smt. Ram Ditti Bai. The subsequent condition imposed in the will that on her death the property in dispute would be inherited in equal shares by the sons could not be given effect to as prior to that Smt. Ram Ditti bequeathed it through a registered will. The learned Counsel contends that in view of the earlier clause, the latter clause shall not prevail and shall be void. In this connection, he has relied upon AIR 1935 187 (Privy Council) Parshotam Dass and Ors. v. Shiv Ram 1940 P. L. R. 209, Para 392 of the Hindu Law, by Mulla; Penumoody Kanakarathnam v. Penumoody Venkatarathnam A. I. R. 1915 Mad 11; Smt Mango v. Smt. Joginder Kaur (1972) 74 P. L. R. 1050; and Ram Gopal v. Nand Lal and others A. I. R. 1981 S. C. 139.

7. The learned Counsel alternatively contends that in view of Section 14(1) of the Hindu Succession Act, Smt. Ram Ditti Bai became an absolute owner of the property in dispute and relies on [Jagannathan Pillai Vs. Kunjithapadam Pillai and Others](#),

8. Counsel for the Respondent controverting the said submission of the counsel for the Appellants contends that in order to interpret the will executed by Shankar Dass, the following principles have to be kept in view:

(1) In construing a document whether in English or in vernacular the fundamental rule is to ascertain the intention from the words used; the surrounding circumstances are to be considered; but that is only for the purpose of finding out the intended meaning of the words which have actually been [Ram Gopal Vs. Nand Lal and Others](#),

(2) In construing the language of the will the court is entitled to put itself into the testator's armchair (Venkata Narasimha v. Parthasarathy) (1913) 41 Ind. App 51 at p. 73 (PC) and is bound to bear in mind also other matters than merely the words used. It must consider the surrounding circumstances, the position of the testator, his family relationship, the probability that he would use words in a particular sense.. .. But all this is solely as an aid to arriving at a right construction of the will, and to ascertain the meaning of its language when used by that particular testator in that document, ([Gnanambal Ammal Vs. T. Raju Ayyar and Others](#),

(3) The true intention of the testator has to be gathered not by attaching importance to isolated expressions but by reading the will as a whole with all its provisions and ignoring none of them as redundant or contradictory ([Raj Bajrang Bahadur Singh Vs. Thakurain Bakhtraj Kuer](#),

(4) The court must accept, if possible, such construction as would give to every expression some effect rather than that which would render any of the expressions inoperative. The court will look at the circumstances under which the testator makes his will such as the state of his property, of his family and the like. Where apparently conflicting dispositions can be reconciled by giving full effect to every word used in document, such a construction should be accepted instead of a construction which

would have the effect of cutting down the clear meaning of the words used by the testator. Further, where one of the two reasonable constructions would lead to intestacy, that should be discarded in favour of a construction which does not create any such hiatus. [Pearey Lal Vs. Rameshwar Das](#),

(5) It is one of the cardinal principles of construction of wills that to the extent that it is legally possible effect should be given to every disposition contained in the will unless the law prevents effect being given to it. Of course, if there are two repugnant provisions conferring successive interest, if the first interest created is valid the subsequent interest cannot take effect but a Court of construction will proceed to the farthest extent to avoid repugnancy, so that effect could be given as far as possible to every testamentary intention contained in the will [Ramachandra Shenoy and Another Vs. Mrs. Hilda Brite and Others](#),

The learned Counsel has taken me through the will. It has bequeathed the estate to Smt Ram Ditti Bai as absolute owner on his death. Just in the next breath, the testator provided the succession on her death, bequeathing the estate in equal shares to his sons English translation of the relevant portion reads as under:

After the death of my wife, all my three sons shall be absolute owners in possession of my estate in equal shares. None else shall have any right thereto But it shall be incumbent upon all my three sons to distribute two year"s entire produce of the aforesaid land amongst my all the four daughters in equal shares So long as my sons do not distribute two years" produce amongst my daughters, they shall not become owners of the aforesaid property.

Keeping the above principles in view, the intention of the testator is to be gathered from the document itself and in order to give effect to the will as a whole and making no part of it redundant It is obvious that only a limited estate was given under the will to Smt. Ram Ditti Bai. This inference is also in consonance with the principal of avoid-ing repugnancy and the construction made on the will to give effect as far as possible to every testamentary intention contained in it. The above conclusion finds corroboration from the circumstances to the effect that there was no ill will between the father and the sons and there was no reason to deprive the sons of the natural inheritance and the only intention was to protect the mother during her life-time.

9. The learned Counsel for the Appellants relied upon Rameshwar Bakhsh Singh v. Balraj Kuer (supra), and contended that in case of repugnancy between two clauses of the will, it was the earlier clause which would prevail I need not go into this question in view of my above findings

10. The judgment cited by the learned Counsel for the Appellants in Smt. Mango v. Smt. Joginder Kaur"s case (supra), does not support the contention of the Appellants inasmuch as absolute ownership was bequeathed in favour of the wife and it was only in the alternative that in case the wife predeceased the testator, then the

property was to be inherited by his daughters in equal shares. This is not the case here. Here inheritance has been provided only on the death of the beneficiary. It is not a succession provided for in the alternative but in fact the same has been provided in series. Other judgments cited are not relevant on the question involved in this case.

11. In view of the above discussion, there is no force in the appeal. The same is dismissed with no order as to costs.