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Jaswinder Kaur and Others Vs Malkiat Singh and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: March 19, 2012

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Section 100
Evidence Act, 1872 â€" Section 68
Succession Act, 1925 â€" Section 63, 63(c)

Citation: (2013) 2 RCR(Civil) 40

Hon'ble Judges: Tejinder Singh Dhindsa, J

Bench: Single Bench

Advocate: Gulzar Mohammad, for the Appellant;

Final Decision: Dismissed

Judgement

Tejinder Singh Dhindsa, J.
The defendants-appellants are in second appeal before this Court. The plaintiffs-respondents filed a suit for

declaration being owners in possession of 1/2 share in equal share on the basis of an unregistered will dated 1.1.2002 and for setting aside

mutation No. 1084. In the alternative the plaintiffs prayed for the suit for possession or for joint possession and a consequential relief for permanent

injunction restraining the defendants No. 1 to 5 from alienating or mortgaging the suit property, had also been prayed for. It is pleaded that Amar

Singh was owner of 1/2 share in respect of the suit land as fully described in the head note of the plaint. He had two sons namely Malkiat Singh

and Karnail Singh i.e. the plaintiffs and two daughters namely Jaswinder Kaur, defendant No. 1 and Gurmaij Kaur i.e. mother of defendants No. 2

to 5. He also left behind a widow namely Swaran Kaur, defendant No. 6. It was pleaded that Amar Singh had executed an unregistered will dated

1.1.2002 in favour of his two sons i.e. plaintiffs with whom he had been residing at the time of his death which occurred on 4.7.2002. Accordingly,

an application was moved for purposes of mutation of the suit land along with a copy of the will, whereupon it was discovered that mutation No.

1084 had been sanctioned on the basis of natural succession. Against such backdrop the suit had been instituted. Even though, defendants No. 1

to 5 put in appearance through counsel but no written statement was filed before the Trial Court and their defence was struck off. Upon their

having preferred a revision in this Court, which was allowed and opportunity had been granted to file a written statement, yet, none was filed. In

the absence of any written statement no issues were framed by the Trial Court.

2. The Trial Court decreed the suit in favour of the plaintiffs and the appeal preferred by the present appellants has been dismissed by the First

Appellate Court. Resultantly, the defendants-appellants are in second appeal before this Court.

3. I have heard Mr. Gulzar Mohammad, learned counsel appearing for the appellants at length.

4. Learned counsel would contend that the will dated 1.1.2002 has not been proved in accordance with law and the Trial Court has erred in

holding the same to be valid and genuine will. Learned counsel would further argue that there has been a misreading and mis-appreciation of

evidence by the courts below in not holding the will in question to be a forged and fabricated document.

5. The High Court in exercise of jurisdiction u/s 100 of the CPC exercises a limited jurisdiction. Interference with the concurrent findings of fact

arrived at by the courts below would only be in the event of a substantial question of law arisen for consideration. A question as to whether the will

has been duly proved and as to whether the same is genuine and valid is essentially a question of fact.

6. The due execution of a will and the statutory requirements for proving the same have been considered by the Hon"ble Apex Court in the matter

of Rur Singh (D) th. LRS. and Others Vs. Bachan Kaur, wherein it has been observed in the following terms:-

14. The High Court essentially entered into the arena of appreciation of evidence. It interfered with the concurrent findings of fact arrived at by the

courts below. Execution of a will is required to be proved in terms of the provisions of Section 63(c) of the Indian Succession Act and Section 68

of the Indian Evidence Act.

The statutory requirements to prove a will in terms of the aforementioned provisions have been laid down in a large number of decisions. We may

notice a few of them.

In Janki Narayan Bhoir Vs. Narayan Namdeo Kadam, while dealing with the question elaborately, this Court held:

8. To say will has been duly executed the requirement mentioned in Clauses (a), (b) and (c) of Section 63 of the Succession Act are to be

complied with i.e. (a) the testator has to sign or affix his mark to the will, or it has got to be signed by some other person in his presence and by his

direction: (b) that the signature or mark of the testator, or the signature of the person signing at his direction, has to appear at a place form which it

could appear that by that mark or signature the document is intended to have effect as a will; (c) the most important point with which we are

presently concerned in this appeal, is that the will has to be attested by two or more witnesses and each of these witnesses must have seen the

testator sign or affix his mark to the will, or must have seen some other person sign the will in the presence and by the direction of the testator, or

must have received from the testator a personal acknowledgement of signature or mark or of the signature of such other person, and each of the

witnesses has to sign the will in the presence of the testator.

As regards compliance of the provision of Section 68 of the Evidence Act, it was opined:-

In a way, Section 68 gives a concession to those who want to prove and establish a will in a Court of law by examining at least one attesting

witness even though will has to be attested at least by two witnesses mandatorily u/s 63 of the Succession Act. But what is significant and to be

noted is that one attesting witness examined should be in a position to prove the execution of a will to put in other words, if one attesting witness

can prove execution of the will in terms of clause (c) of Section 63 viz., attestation by two attesting witnesses in the manner contemplated therein,

the examination of other attesting witness can be dispensed with. The one attesting witness examined, in his evidence has to satisfy the attestation of

a will by him and the other attesting witness in order to prove their was due execution of the will. If, the attesting witness examined besides his

attestation does not, in his evidence, satisfy the requirements of attention of the will by other witness also it falls short of attestation of will at least

by two witnesses for the simple reason that the execution of the will does not merely mean the signing of it by the testator but it means fulfilling and

proof of all the formalities required u/s 63 of the Succession Act. Where one attesting witness examined to prove the will u/s 68 of the Evidence

Act fails to prove the due execution of the will then the other available attesting witness has to be called to supplement his evidence to make it

complete in all respects. Where one attesting witness is examined and he fails to prove the attestation of the will by the other witness there will be

deficiency in meeting the mandatory requirements of Section 68 of the Evidence Act.

Following the said decision, as also the other decision in Benga Behera and Another Vs. Braja Kishore Nanda and Others, , this court held:-

...Execution of a will must conform to the requirement of Section 63 of the Succession Act, in terms whereof a will must be attested by two or

more witnesses. Execution of a will, however, can only be proved in terms of Section 68 of the Indian Evidence Act. In terms of said provision, at

least one attesting witness has to be examined to prove execution of a will.

7. In the facts of the present case the will has been held to be duly proved in accordance with law. Such is the concurrent finding of fact recorded

by both the courts below. Harsharan Singh, one of the attesting witnesses to the will was duly examined, wherein he had stated clearly that Amar

Singh had got the will typed and then thumb marked the same upon admitting the contents of such will to be correct in his presence and it was

thereafter that such witness had appended his signatures. Gurmit Singh the other attesting witness and the then Panch of the village has also

deposed that when he had arrived at the place of the execution of the will, Amar Singh deceased had been present along with the Typist and the

Typist had read over and explained the will to him and it was only upon seeing the thumb impression of deceased Amar Singh that he had

appended his signatures on the will. The requirement of proving the will in terms of Section 68 of the Indian Evidence Act, 1872 would be fully

met, even if, one of the attesting witnesses is examined who in turn deposed towards the due execution of such document. I find no perversity in

the findings recorded by the courts below to hold the due execution of the will dated 1.1.2002.

8. Even though, an argument had been raised with regard to the will being forged and fabricated but no evidence to corroborate such plea was led

on record. A bald statement to such effect would certainly not suffice in the wake of the plaintiffs-respondents having examined the attesting

witnesses to the will and having also produced the original will by summoning of the file of the mutation proceedings. Learned counsel appearing for

the appellants, then, argued that the courts below have not taken into account the fact of disinheriting the other Class-I Legal Heirs i.e. the

daughters. Even such fact has been duly considered by the First Appellate Court, wherein it has been noticed that the will in question dated

1.1.2002 contains a recital with regard to his two sons having looked after the deceased Amar Singh and the fact that one of his daughters namely

Gurmaij Kaur having already expired and the other daughter namely Jaswinder Kaur having been duly married. The will in question also contained

an arrangement for his wife, wherein both the sons i.e. the plaintiffs-respondents were bound down to look after their mother till her death. As such

the courts below have concluded that such circumstance of not bequeathing the suit property in favour of the daughters will not be such a

suspicious circumstance so as to hold the will to be forged or fabricated. The intention of the testator has been seen by the courts below from the

contents of the will. The findings recorded by the courts below are based on sound and valid reasoning.

For the reasons recorded above, I do not find it to be a fit case that would warrant interference with the findings recorded by the courts below.

The present second appeal does not raise any question of law much less a substantial question of law. The appeal, accordingly, is dismissed.