

**Dhani Ram (deceased) through his LRs : Kala Devi and Others -
Appellants/Defendants @HASH Sunder Ram (deceased) through his LRs :
Burfi Devi and Others /Plaintiffs**

Court: High Court of Himachal Pradesh

Date of Decision: Aug. 9, 2016

Acts Referred: Civil Procedure Code, 1908 (CPC) - Section 100
Specific Relief Act, 1963 - Section 37, Section 38

Citation: (2016) 4 HimLR 2433 : (2016) 3 SimLC 1710

Hon'ble Judges: Tarlok Singh Chauhan, J.

Bench: Single Bench

Advocate: Mr. J.L. Bhardwaj, Advocate, for the Appellant; Mr. Bhupender Gupta, Senior Advocate, with Mr. Neeraj Gupta, Advocate, for the Respondent Nos. 1(a) to 1(g)

Final Decision: Disposed Off

Judgement

Tarlok Singh Chauhan, J. - This Regular Second Appeal under Section 100 of the Code of Civil Procedure has been filed by the

defendants/appellants against the judgment and decree dated 01.04.2004 passed by learned District Judge, Bilaspur in Civil Appeal No. 82 of

1997 whereby he set-aside the judgment and decree dated 27.3.1997 passed by learned Senior Sub Judge, Bilaspur, District Bilaspur, H.P. in

Case No. 215-1 of 1995/90 and thereby decreed the suit of the plaintiff/respondent. For convenience, the parties are referred to as plaintiff and

defendants.

2. The facts as are necessary for determination of this appeal are that the plaintiff filed a suit for permanent prohibitory injunction restraining the

defendants from causing interference in his possession over the land as detailed in the head note of the plaint (hereinafter referred to as the "suit

land"). Alternatively, it was prayed that in case the defendants succeeds in dispossessing the plaintiff from the suit land during the pendency of the

appeal, then a decree for possession be passed accordingly. It was averred that Smt. Nihatu Devi paternal aunt of the plaintiff was married to Sita

Ram and when the plaintiff was two years old, he was adopted by Sita Ram and Nihatu Devi as per the ceremony and since then he had been

brought up in the home by his adoptive parents. It was further averred that on 19.6.1987 Sita Ram executed a Will of his estate in favour of his

wife Nihatu Devi as also the plaintiff. Under the Will, Smt. Nihatu Devi was given a limited right to enjoy the property till her death and in the event

of death, the said property was to revert to the plaintiff. It was further averred that during the minority of the plaintiff, defendant Udho Ram might

have assisted late Sh. Sita Ram in cultivation of the land, but as soon the plaintiff attained majority, he started cultivating the land by himself.

Defendant Udho Ram allegedly filed a false case against the plaintiff as also Sita Ram, which terminated in a compromise in which Udho Ram

agreed not to dispute the Will executed in favour of the plaintiff on payment of Rs. 6000/- in lump sum. Resultantly, that suit was dismissed as

having been compromised and the defendants also admitted the possession of the plaintiff qua the suit land on receipt of the aforesaid amount.

3. Defendant Udho Ram was stated to have abducted Sita Ram, who was later on stated to have been murdered. Nihatu Devi, too expired and

the plaintiff claimed to have performed her last rites. As per the plaintiff, while he was cultivating the suit land on 3.6.1990, the defendants came

and threatened to take forcible possession of the suit land and that led to filing of the instant case for declaration and injunction.

4. The defendants contested the suit by filing written statement wherein preliminary objections regarding maintainability, cause of action, locus-

standi, non-joinder and mis-joinder of necessary parties, valuation etc. were taken. On merits, it was pleaded that the suit land had been purchased

by them vide sale deed dated 22.8.1989 and 16.9.1989 respectively. The defendants also disputed the adoption of the plaintiff by Sita Ram and

further disputed his right, title and interest over the suit land and even the execution of the Will in his favour was disputed and it was further averred

that in case any such document as alleged by the plaintiff is produced then the same is forged and fabricated one. The compromise and the

agreement were also questioned and disputed. The defendants therefore prayed that since Sita Ram had sold the suit land for consideration Rs.

45,000/-, therefore, the plaintiff has no right, title and interest whatsoever over the suit land and as such, prayed for dismissal of the same.

5. The plaintiff filed replication wherein the contents of the written statement were controverted and those of the plaintiff were reiterated.

6. On 19.11.1991 the learned trial Court framed the following issues:

1. Whether the plaintiff is in possession of the suit land as owner? OPP

2. Whether Sh. Sita Ram executed valid will dated 19.6.1987 in favour of the plaintiff as alleged? OPP

3. Whether the defendants are interfering and threatening to take forcible possession of the suit land? OPP

4. Whether the defendants are owners in possession of the suit land by virtue of sale deeds dated 22.8.1989 and 16.9.1989? OPP

5. Whether Sh. Udho Ram purchased land from Sh. Sita Ram and entered into compromise with the defendants that the Will is in favour of the

plaintiff and admitted about possession of plaintiff over the suit land? OPP

6. Whether the suit is not maintainable? OPD

7. Whether the plaintiff has no locus standi to file the suit? OPD

8. Whether the suit is bad for mis-joinder and non-joinder of necessary parties? OPD

9. Whether the suit is not properly valued and verified? OPD

10. Relief.

7. After recording the evidence led by the parties and evaluating the same, the learned trial Court dismissed the suit of the plaintiff, constraining him

to file the appeal before the learned lower Appellate Court, who vide judgment and decree dated 01.04.2004 reversed the judgment and decree

of the learned trial Court and the suit of the plaintiff was ordered to be decreed by holding the plaintiff to be owner on the basis of the Will dated

19.6.1987 and the defendants were directed to hand over the possession back to the plaintiff.

8. Aggrieved by the judgment and decree passed by the learned lower Appellate Court, the defendants/appellants have filed this Regular Second

Appeal which was admitted by this Court vide order dated 17.8.2004 on the following substantial question of law:

Whether the impugned judgment passed by the Ld. First Appellate Court is the result of total misreading and misappreciation of pleading and

evidence adduced on record by the parties and thus the resultant findings and conclusion are wrong and incorrect?

I have heard learned counsel for the parties and have gone through the records of the case carefully and meticulously.

9. At the outset, it may be observed that the specific defence set up by the defendants in para-1 of the written statement on merits was that they

purchased the suit land by virtue of registered sale deeds dated 22.8.1989 and 16.9.1989 and the same is reproduced as under:

1. That para No.1 of the plaint is wrong and not admitted. The defendants are the owners in possession of the suit land. The defendants have

purchased the suit land by virtue of the registered sale deeds of dated 22.8.1989 and 16.9.1989.

10. The plaintiff though filed replication, but did not choose to deny the sale deeds in parawise replication, which reads thus:

1. That para No.1 of the written statement is wrong and is not admitted. Para No.1 of the plaint is correct. The defendants are neither owners nor

in possession of the suit land.

11. Undeniably, the denial of facts stated in particular paragraph of the plaint/written statement is a matter of form and not substance. But then I

find that the factum of registered sale deeds apart from not having been denied in the corresponding para of the replication has in fact not at all

been traversed anywhere in the replication.

12. Now, what would be the effect of there being no specific denial in the replication to a specific averment made in the written statement has

earlier been dealt with by this Court in *Khub Ram and another v. Bhim Dassi and others* 2014 (3) Him.L.R. 1582 and there also the

question arose as to whether the replication/ rejoinder constitutes pleadings under Order 6, Rule 1 CPC and it was held that the

replication/rejoinder would essentially constitutes ""part of the pleadings"" under Order 6, Rule 1 and the relevant observations reads thus:

9. This question has been framed in the backdrop of the fact that the appellants for the first time in their written statement had challenged the status

of the plaintiff being widow of Shobhu. These averments obviously could have been rebutted only by way of replication/rejoinder and, therefore, in

this background the rejoinder essentially constitutes ""part of the pleadings"" under Order 6, Rule 1 . There was no requirement of law that the

plaintiff in the suit should have pleaded divorce from Manglu and thereafter her marriage with Shobhu. It is only when this fact was denied by the

defendants-appellants in their written statement, that all these pleas were controverted and elaborated in the replication. Therefore, in this factual

context, an inescapable conclusion that can be drawn is that the replication/rejoinder was essentially a part of the pleadings under Order 6, Rule 1 .

10. Not only this, even the law considers rejoinder to be an essential part of the pleadings as is clear from the following observations of the

Hon"ble Supreme Court in *Sri Subramania Desika Gnanasambanda Pandarasannidi v. State of Madras and another* AIR 1965 SC

1578 wherein it has been held as under:-

17. That takes us to the consideration of the question as to whether the two reasons given by the High Court in support of this decision are valid.

The first reason, as we have already indicated, is that the High Court thought that the plea in question had not been raised by the appellant in his

writ petition. This reason is no doubt, technically right in the sense that this plea was not mentioned in the first affidavit filed by the appellant in

support of his petition; but in the affidavit-in-rejoinder filed by the appellant this plea has been expressly taken. This is not disputed by Mr. Chetty,

and so, when the matter was argued before the High Court, the respondents had full notice of the fact that one of the grounds on which the

appellant challenged the validity of the impugned Order was that he had not been given a chance to show cause why the said notification should not

be issued. We are, therefore, satisfied that the High Court was in error in assuming that the ground in question had not been taken at any stage by

the appellant before the matter was argued before the High Court.

11. Similarly, in *Jag Dutta v. Smt. Savitri Devi* AIR 1977 Punjab and Haryana 68, the Hon^{ble} Punjab and Haryana High Court has clearly

held that the replication is a part of pleadings in the following terms:-

18. The learned counsel for the petitioner raised two arguments; firstly, that the landlady did not specifically incorporate two of the ingredients

mentioned in Section 13(3)(a)(1) of the 1949 Act, namely, that she was not occupying another residential building in the area of Ambala

Cantonment and that she had not vacated such a building without sufficient cause after the commencement of the Act in Ambala Cantonment and,

secondly, that she did not require the house bona fide for her residence. I have heard the learned counsel for the parties and do not find merit in

any of the contentions. I shall first advert to the first contention. It is not disputed that the aforesaid two ingredients were taken by the landlady in

her replication filed in reply to the written statement. It is an established proposition of law that replication is a part of pleadings. In the

circumstances, it cannot be said that the two ingredients of Section 13 (3) (a) (i) have not been pleaded by the landlady.

13. It is more than settled law that every allegation of fact if not specifically denied is deemed to be admitted except as against a person under

disability. Having said so, it would be noticed that the Will alleged to have been executed on 19.6.1987, whereas the sale deeds were executed

much later on 22.8.1989 and 16.9.1989, respectively and the testator Sita Ram is said to have died on 4.10.1989.

14. It is trite that a Will is the testament of the testator. It is a posthumous disposition of the estate of the testator directing distribution of his estate

upon his death. It is not a transfer by inter vivos. The two essential characteristics of a Will are that it is intended to come into effect only after the

death of the testator and is revocable at any time during the life time of the testator. It is rightly said that so long as the testator is alive, a Will is not

worth the paper on which it is written, as the testator can revoke it at any time.

15. At this stage, even if the admission of the plaintiff is ignored, then the further question arises as to whether the appellants/defendants have been

able to prove the sale deeds relied upon by them and, therefore, it becomes necessary for this Court to advert to the oral and documentary

evidence led by the parties in this regard.

16. The sale deeds dated 22.8.1989 has been exhibited as Ext. DW-2/B while the sale deed dated 16.9.1989 has been exhibited as Ext.DW-

2/A. Both these sale deeds were scribed by I.D.Sharma, Advocate, Ghumarwin, who duly proved the same while appearing as DW-2 and

categorically stated that the sale deeds had been scribed by him at the instance of Sita Ram.

17. One of the defendant Burfi Ram also stepped into the witness box as DW-1 and deposed that part of the suit land was purchased by the

defendants from Sita Ram vide sale deed Ext.DW-2/A dated 16.9.1989. This witness further deposed that remaining part of the suit land was

purchased by defendant Dhani Ram and Ganga Ram vide sale deed Ext.DW-2/B dated 22.8.1989. As per this defendant, mutation of the suit land

also stands attested in favour of the defendants vide Ext.DW-5/A. Nothing material could be elicited by the plaintiff during the cross-examination,

though the defendant had been cross-examined at length.

18. DW-5 Chandu Ram was the Sub Registrar at the relevant time, who clearly stated that the sale deed dated 22.8.1989, had been registered by

him in accordance with the prescribed procedure. He has clearly stated that before registering the sale deeds, he had read over and explained the

contents thereof to the vendor and only thereafter had registered the sale deed Ext. DW-2/B.

19. DW-7 Piar Singh proved the attestation of the registered sale deed dated 16.9.1989 Ext.DW-2/A. DW-8 P.L. Sharma, Advocate has

categorically stated that on 22.8.1989 Sita Ram had come to him and got prepared the sale deed. He further stated that Udho Ram and Ranjeet

Singh were accompanying him. The deed was scribed by I.D. Sharma, Advocate and he had identified the vendor i.e. Sita Ram before the

Registrar and further stated that sale deed had been prepared in his presence.

20. Surprisingly enough, the learned lower Appellate Court has discarded this evidence that too only on the basis of surmises and conjectures. It

has gone to the extent of holding that the defendants might have produced some other person other than Sita Ram in collusion with lawyers and got

these deeds attested. How, he arrived at such a conclusion is anybody's guess more particularly when this was not even the pleaded case of the

respondents. He further goes on to observe that ""Sub Registrar appeared to have attested and registered the sale deeds in routine course of official

business and at the stage of evidence was required to go by the documents registered by him.

21. There is no factual much less legal basis for such observations and the learned lower Appellate Court otherwise seem to be totally oblivious to

the legal presumption attaching to the registered document.

22. In Ningawwa v. Byrappa Shiddappa Hireknrabar AIR 1968, SC 956, the Hon"ble Supreme Court held as under:

27. There is a presumption that a registered document is validly executed. A registered document, therefore, prima-facie would be valid in law.

The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. In the instant case, Respondent 1 has not been able

to rebut the said presumption.

23. Indisputably, the sale deeds in question are registered and are presumed to have been validly executed and the onus of proof, will be on those,

who want to off-set the above presumption.

24. In Prem Singh v. Birbal (2006) 5 SCC 353, it was held as under:

27. There is a presumption that a registered document is validly executed. A registered document, therefore, prima-facie would be valid in law.

The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. In the instant case, respondent No.1 has not been

able to rebut the said presumption.

25. In Vimal Chand Ghevarchand Jain and others v. Ramakant Eknath Jadoo (2009) 5 SCC 713, the Hon"ble Supreme Court held that

registered sale deed is presumed to be valid unless the contrary is proved. The onus is on the person who challenges the same to show that it is

either not acted upon or is a sham transaction.

26. Learned lower Appellate Court appears to be totally oblivious to the legal position that heavy burden of proof lies upon a person impugning

transaction to show that the same is a sham or fraudulent one. A distinction has to be borne in mind in regard to the nominal nature of a transaction

which is no transaction in the eye of the law at all and the nature and character of a transaction as reflected in a deed of conveyance.

27. To say the least, not only the findings recorded by the learned lower Appellate Court are hypothetical and based on surmises and conjectures,

but the same are otherwise perverse and not based upon the material placed on record, rather the observations contained therein are absolutely

extraneous to the record. Substantial question of law is accordingly answered in favour of the appellants.

28. In view of the aforesaid discussion, there is merit in this appeal and the same is accordingly allowed and the judgment and decree passed by

learned lower Appellate Court is set-aside and that of the learned trial Court is restored, leaving the parties to bear their own costs.

27. Pending application(s), if any, also stands disposed of.