Virender Singh Vs Shyam Devi

Court: Delhi High Court

Date of Decision: Sept. 7, 2010

Acts Referred: Evidence Act, 1872 â€" Section 59, 60, 79
Succession Act, 1925 â€" Section 88

Hon'ble Judges: Indermeet Kaur, J

Bench: Single Bench

Advocate: Sanjeev Soni, for the Appellant; Nemo, for the Respondent

Final Decision: Dismissed

Judgement

Indermeet Kaur, J.
This second appeal has impugned the judgment and decree dated 3.3.2010 which had endorsed the finding of the trial

judge dated 11.8.2009 decreeing the suit of the plaintiff.

2. The plaintiff had filed a suit for possession of property bearing No. 102-A, Mohalla Kesari, Circular Road, Shahdara, DelhiÃ¯Â¿Â½ 110032

(hereinafter referred to as "the suit property"). She claimed herself to be the owner of the suit property by virtue of a will dated 3.9.1986 executed

by her deceased husband Raghuvansh Lal. It was on the basis of this will that she had claimed ownership to the suit property. Consequently, the

present suit was filed.

3. The trial judge had framed five issues. Issue No. 1 was the crucial issue which inter alia reads as follows:

Whether the plaintiff is entitled for the relief of possession as prayed for? OPP.

4. Onus to discharge this issue was on the plaintiff. The trial court had examined the will Ex.PW-1/1 dated 3.9.1986 propounded by the plaintiff.

The defendant who is the brother of the deceased had also set up a counter will i.e. will dated 3.7.1984 Ex.DW1/A. This was also examined by

the trial judge. The contention of the appellant before this Court is that the will Ex.PW-1/1 has been recorded in suspicious circumstances and this

is evident from a reading of the will which has contradictory clauses; the last paragraph of Ex.PW-1/1 had made a reference to his wife as having

no right in the property whereas in the first para of the will he had bequeathed his property in favour of his wife were inconsistent readings which

were irreconcilable and had raised a suspicion on this document. Contention of the learned Counsel for the appellant that these versions of the

testator as aforenoted are inconsistent and if such an inconsistency arises; u/s 88 of the Indian Succession Act, the last para of the two Clauses

shall prevail and must be given effect to. For this proposition reliance has been placed upon 2000 III AD 428 SC Balwant Kaur and Anr. v.

Chanan Singh and Ors. The trial court has however relied upon the first para of the will and this has raised a substantial question of law.

5. This contention was repelled by the Trial Judge. The testimony of the attesting witness PW-1 had also been taken into regard. The plaintiff was

held to have established her title to the suit property. Decree for possession was passed in her favour.

6. The second contention of the learned Counsel for the appellant is that the provisions of Sections 59 and 60 of the Evidence Act have not been

conformed to. The testimony of the plaintiff in his cross-examination is contrary to his version in his examination in chief. In her cross-examination

PW-2 (plaintiff) has categorically stated that she does not know the contents of her affidavit Ex.PW-2/A. This has thrown out her version in toto.

This again raises a substantial question of law.

7. The substantial question of law have otherwise been formulated on pages 5 to 7 of the memo of appeal.

8. Arguments of the learned Counsel for the appellant are clearly devoid of any merit. The document i.e. the will of the testator Ex.PW-1/1 has

been gone into in an indepth detail by the trial judge as also by the first appellate court. The findings of the trial judge have been discussed supra.

The first appellate court had dealt with these contentions in para 16 to para 24. The impugned judgment had noted that the appellant had taken no

objection in his written statement about the ambiguity/suspicious circumstances in which the will had been executed. It was held that if this was a

defence of the defendant, he should have got a specific issue framed in this regard. The suspicious circumstances had otherwise been adequately

dealt with by the trial court. The purported will raised by the defendant/brother of the testator dated 3.7.1984 had also been examined; the

contrary defences set up by the defendant that his brother had suffered a paralytic attack in 1983 and as such the will executed in 1986 is sham

was balanced with the will purported to have been executed by the testator in 1984 as set up by the defendant and it was held that there was

nothing on record to show that the mental condition of the testator was not good at the time when he had executed his last testament dated

3.9.1986 Ex.PW-1/1 in favour of his wife. There was no ambiguity in the said document.

9. The submission of the learned Counsel for the appellant which has been propounded before this Court that the original will had not been

produced was also repelled. Certified copy of the document had been proved on record. The will stands proved if an attesting witness is

produced; there is also a presumption u/s 79 of the Evidence Act about the genuineness of a certified copy of a document.

10. It is a settled proposition of law that no one sentence of a witness can be extracted and be read in exclusion to suit or nonsuit a party.

Testimony of the witness has to be read as a whole. Testimony of PW-2 (plaintiff) was held to be trustworthy, clear and cogent, establishing her

case in her favour which had led the decree in her favour. Provisions of Sections 59 & 60 of the Evidence Act do not come to the aid of the

appellant in any manner.

11. No question of law much less any substantial question of law has been raised in this second appeal. Arguments addressed before this Court

are all fact based submissions which have already been gone into by the two fact finding courts below. This is not a third fact finding court. The will

Ex.PW-1/1 had been adequately proved. Attesting witness of the document had come into the witness box as PW-1. There was no ambiguity in

the said document. This finding has been affirmed by the first appellate court corroborating the finding of the trial court. There is no merit in this

appeal. Appeal as also the pending application is dismissed.