

Shyam Lal Vs. Narda Devi

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Court : Himachal Pradesh

Decided On : Jul-24-2012

Judge : V.K. Ahuja

Appeal No. : RSA No. 361 of 2006-E

Appellant : Shyam Lal

Respondent : Narda Devi

Judgement :

V.K. Ahuja, J.

Oral:

1. This is a regular second appeal filed by the appellant/plaintiff under section 100 C.P.C against the judgment and decree, dated 1.7.2006, passed by the learned District Judge Solan, affirming the judgment and decree, dated 9.12.2005, of the learned Senior Sub Judge (Senior Division), Kandaghat, dismissing the suit of the plaintiff for permanent injunction as against the defendant.

2. Briefly stated, the facts of the case are that the appellant, hereinafter referred to as plaintiff, filed a suit for permanent injunction as against the respondent, hereinafter referred to as the defendant. It was alleged by the plaintiff that the land in suit, as described in the plaint, was owned and possessed by Smt.Krishani Devi. It was alleged that the plaintiff was nephew of Smt.Krishani Devi, who had

executed a valid and registered Will, dated 5.9.1989, in favour of the plaintiff and the defendant in equal shares bequeathing her entire moveable and immoveable property in favour of both the parties. It may be clarified that the defendant is the daughter of the deceased Krishani Devi. It was alleged by the plaintiff that the Will was executed by the deceased in favour of both the parties out of her love and affection since the plaintiff was maintaining Krishani Devi. It was also alleged that the last rites were performed by the plaintiff and both the plaintiff and defendant have succeeded to the estate of Smt.Krishani Devi on the basis of the Will and since the defendant is threatening to interfere in the possession of the plaintiff over the suit land, hence the suit filed by the plaintiff.

3. Defendant denied that any valid Will was executed by the deceased in favour of the parties and it was pleaded that the Will, if any, is a forged and fabricated document, which has been prepared by the plaintiff in collusion with interested persons. It was also alleged that the deceased was suffering from mental deformity and was not possessing sound disposing mind. The defendant also pleaded that the deceased was being looked after and attended upon by the defendant since she was living with the defendant and her family members. It was denied that the plaintiff was serving the deceased. Defendant had also filed a counter claim claiming the relief of declaration that the defendant is owner in possession of the suit land having inherited it from the deceased.

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

"1. Whether Smt.Krishni executed a valid Will dated 5.8.1989 in favour of the parties as alleged? OPP

2. Whether the plaintiff is entitled to the relief of permanent prohibitory injunction, as prayed for? OPP

3. Whether the Will in question is the result of fraud and mis-representation and concealed as alleged? OPD

4. Whether the defendant is the sole legal heir of deceased Krishni as alleged in the counter claim? OPP

5. Whether the defendant is entitled to a decree for permanent prohibitory injunction against the plaintiff as prayed for in the counter claim? OPD

6. Relief."

5. Parties led their evidence and the learned trial Court vide its impugned judgment and decree, decided issues No.1, 3 and 4 as against the plaintiff and in favour of the defendant and consequently held that the Will was surrounded by suspicious circumstances and as such the suit was dismissed and the counter claim put up by the defendant was decreed. On appeal, those findings were affirmed by the learned District Judge vide his impugned judgment and decree.

6. I have heard the learned counsel for both the parties and have gone through the record of the case.

7. The appeal in question has been admitted by this Court on the following substantial question of law:

Whether the conclusion of the two courts below that testatrix did not possess a sound disposing mind, is not based on lawful and proper appreciation of evidence.

8. The main question, which arises for consideration is as to whether the Will was executed by the executants in a sound disposing mind and whether both the courts below had not properly appreciated the evidence of the parties in coming to the conclusion that the Will was not validly executed by the deceased.

9. As already mentioned above the defendant is the real daughter of the deceased, while the plaintiff is the nephew and this relationship is not in dispute. The only question is as to whether the Will was executed by the deceased in a sound disposing mind or not.

10. The defendant had taken the plea that the executants was not possessing sound disposing mind since she was suffering from some mental ailment and the defendant had been taking her for treatment to different places. The plaintiff in the plaint never alleged that the deceased was suffering from some mental ailment or had been under treatment for a number of years and during lucid period this Will

was executed in his favour. However, when the evidence was led by the defendant to prove that the deceased was suffering from some mental ailment, the plaintiff changed his statement and took up the plea that the Will was executed in lucid intervals which was never the case of the plaintiff. The plaintiff had never pleaded that the deceased was suffering from some mental ailment and he had only pleaded that she was suffering from gynae problem for which she was treated. However, this fact goes against the plaintiff that he never pleaded that the deceased was undergoing some treatment for mental ailment and to prove this fact, the defendant had examined two Medical Officers to substantiate her case.

11. Two Medical Officers examined by the defendants are DW-4 Dr.Virender Mohan and DW-6 Dr.Gurwinder Singh. The statements of both these witnesses have been duly discussed by both the courts below. A perusal of the judgment passed by the learned trial Court shows that there is statement of the defendant that she took the deceased to DW-4 Dr.Virender Mohan at Dharampur for treatment of mental disorder. She stated about her condition that she stopped eating medicines, used to remain disturbed and was given electric shocks. Her statement finds corroboration from the statement of DW-4 Dr.Virender Mohan, who stated that he was running a Nursing Home at Dharampur since 1974. He had admitted that Krishani Devi, widow of Shankru came to his clinic for treatment on 1.4.1985 and remained admitted in the hospital upto 9.8.1985. The relevant part of the observations made by the learned trial Court, while discussing the evidence of this witness, is as follows:

When he examined Kishani Devi on 19.6.1985 she was suffering from acute schizophrenia. He gave her four electric shocks during her admission in the year 1985. He has also brought O.P.D. register and proved its extract Ex.DW4/B. He has further stated that Kishani Devi was again admitted for same disease in her clinic on 5.11.1990, and she was discharged on 17.11.90. The nephew of Kishani Devi i.e. plaintiff was also present at that time alongwith her. He has also proved the O.P.D. slip and other document Ex.DW-4/C. He gave shocks to the Kishani Devi on 5.11.1990, 8.11.1990, 11.11.1990 and 14.11.1990. According to him the patient was suffering from some disease from 20 to 25 years. He has clearly mentioned the symptoms of disease on Ex.DW4/C. He has proved the photocopy

of O.P.D. register extract Ex.DW-4/D.

12. He had also proved the copy of the register containing the treatment given to the mentally disordered persons and he submitted that the Compounder used to take the history of the patients. The other witness examined by the defendant is DW-6 Dr.Gurwinder Singh from Bhatia Hospital, Anandpur Sahib, who has stated that he is not a psychiatric doctor but simply an MBBS and that he was treating the patients. He stated that he had kept her under treatment for three months but she did not return after the expiry of three months. He stated that Krishani Devi was suffering from mental disorder. The statement of both these witnesses were again discussed by the learned District Judge and both the courts below had come to the conclusion that the deceased was suffering from some mental disorder. According to DW-4, the deceased was suffering from schizophrenia and as per DW-6, she was suffering from Anxiety Neurosis with Psychosis ailment. After referring to the testimony of both the Medical Officers and record produced by them, it was held by both the courts below that the deceased had been taken for treatment once by her son-in-law and once by the plaintiff also, whose signatures are there in the register maintained by the Medical Officer. These signatures were compared by the learned trial Court, who had come to the conclusion that the plaintiff had also taken the deceased for treatment and, therefore, the concealment of this fact by the plaintiff that the deceased was suffering from mental ailment or was taken for treatment goes as against him.

13. The submissions made by the learned counsel for the appellant were that there is evidence to show that the deceased had validly executed Power of Attorney in favour of the plaintiff, who had been pursuing her cases in connection with land acquisition or receiving the money, which clearly suggests that she was of sound disposing mind. The mere fact that the Power of Attorney was executed in favour of the plaintiff or he had been receiving money on her behalf is not sufficient to hold that she was possessing a sound disposing mind at the time of execution of the Will. This only suggests that the plaintiff was close to the deceased and the deceased had faith in him and since he was serving and looking after her, as alleged by him, she may have given him the Power of Attorney, but that does not prove her sound disposing mind at the time of execution of the Will.

14. According to the evidence, once the deceased was treated 1-2 months prior to the execution of the Will i.e. on 1.7.1989, as stated by DW-6 and the Will was executed on 5.9.1989, which clearly shows that the Medical Officer had opined that she needs treatment for three months and within three months, this Will was executed allegedly by the deceased in favour of both the parties.

15. The above evidence, therefore, clearly leads to the conclusion that the deceased was suffering from mental disorder whether schizophrenia or otherwise, but she cannot be termed of sound disposing mind when the Will was executed on 5.9.1989 since on 1.7.1989, she had been treated by DW-6.

16. It is, therefore, clear from the above discussion that both the courts below had referred to the evidence and had concluded that the Will was executed in the presence of two attesting witnesses and one of the attesting witnesses and the scribe had been examined, who proved that the deceased was explained the contents of the Will which was thumb marked by her in presence of the witnesses and the witnesses signed in presence of the deceased. This only proves the due execution of the Will and not the question as to whether the deceased was of sound disposing mind on the date of execution of the Will. Both the courts below had come to the conclusion that the Will was surrounded by suspicious circumstances and since the deceased was not of sound disposing mind, she could not validly execute the Will. On appraisal of the evidence led by the parties, it is clear that it cannot be said that the Will was not surrounded by suspicious circumstances or that the deceased was of sound disposing mind. The conclusions drawn by both the courts below after due appraisal of the evidence do not call for an interference. A reference has been made above to the evidence led by the defendant to prove the mental state of the deceased and I am of the opinion that the findings of both the courts below are liable to be affirmed since they had discussed the evidence in proper manner.

17. No other point was urged.

18. In view of the above discussion, I accordingly hold that there is no merit in the appeal filed by the appellant, which stands dismissed. However, the parties are left to bear their own costs.

