

Shivdevi and ors. Vs. Surja Devi and ors.

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Court : Madhya Pradesh

Decided On : Dec-09-1998

Reported in : 1999(1)MPLJ583

Judge : S.P. Srivastava, J.

Acts : Evidence Act, Sections 45

Appeal No. : S.A. No. 316 of 1996

Appellant : Shivdevi and ors.

Respondent : Surja Devi and ors.

Advocate for Def. : D.D. Bansal, Adv. for Respondent Nos. 1 to 8

Advocate for Pet/Ap. : H.D. Gupta, Adv.

Disposition : Appeal dismissed

Judgement :

S.P. Srivastava, J.

1. Heard the learned counsel for the appellants who are the heirs and legal representatives of the deceased sole plaintiff, Ramlakhan.

2. Perused the record.

3. The appellants feel aggrieved by the decree passed by the first Appellate Court whereunder dismissing their appeal, the decree passed by the trial Court dismissing the plaintiffs suit has been upheld.

4. Ramlakhan, the predecessor-in-interest of the present appellants had filed the suit giving rise to this appeal seeking a declaration that he be declared to be the heir of Shivnarayan, deceased on the basis of the 'Will' dated 10-6-1975, executed by him in his favour. He also prayed for a direction for the recording of his name in the revenue records as bhumiswami of the agricultural holdings in dispute cancelling the orders passed by the revenue authorities including the Board of Revenue. A decree of permanent prohibitory injunction was also claimed against the defendants restraining them from interfering in the ownership and possession of the plaintiff over the land in suit.

5. The plaintiff had come up with the case that Shivnarayan was the bhumiswami in possession of the agricultural holdings in dispute who had died on 20-7-1975. In paragraph 2 of the plaint, it was asserted that Shivnarayan was not married and had no issue or any heir. In paragraph 3 of the plaint, it had been asserted that the plaintiff was a khandani brother of Shivnarayan who had no Najadiki waris and Shivnarayan had great love and affection for the plaintiff. He had executed a 'Will' in his favour on 10-6- 1975, bequeathing his interest in the land in dispute.

6. In the mutation proceedings, which were started after the death of Shivnarayan, which was fought upto the Board of Revenue, an order was passed in favour of the defendant No. 1, which remained intact.

7. The suit giving rise to this appeal was filed on 15-5-1982.

8. The suit was contested by the defendant No. 1 on various grounds. While it was admitted that Shivnarayan was the last male tenure holder, it was asserted that the plaintiff was not a Khandani brother of Shivnarayan. The execution of the 'Will' by Shivnarayan in favour of the plaintiff was also denied. It was admitted that the name of the defendant No. 1 had been recorded as an heir of Shivnarayan. The defendant No. 1 had also stated that the defendants Nos. 2 to 7 were entitled to succeed to the interest of the deceased, Shivnarayan. But honouring the wishes of

the deceased, Shivnarayan, the defendants Nos. 2 to 7 had not contested the claim of the defendant No. 1 for being recorded as the successor-in-interest of Shivnarayan. It was claimed that the 'Will' relied upon by the plaintiff was a forged and fictitious document prepared after the death of Shivnarayan.

9. The defendants Nos. 2, 3 and 5 had filed a separate written statement supporting the case of the defendant No. 1. These defendants claimed to be in possession of the land in dispute.

10. The defendant No. 4 filed a separate written statement who has also supported the case of the defendant No. 1.

11. The trial Court held that the plaintiff was not the heir of Shivnarayan and his assertion that on account of his being Khandani brother and on account of love and affection, he was residing with Shivnarayan was false. It was further found that the plaintiff had failed to prove the execution of the 'Will' dated 10-6-1975, relied upon by him. It was also found that the plaintiff had never been in possession over the land in dispute after the death of Shivnarayan as claimed. The suit was found to be barred by time.

12. On the aforesaid findings, the trial Court dismissed the suit of the plaintiff.

13. On account of the death of Ramlakhan, the sole plaintiff, his heirs and legal representatives, the present appellants filed an appeal before the first Appellate Court challenging the decree of the trial Court.

14. The first Appellate Court affirmed, the findings recorded by the trial Court negating the claim of the plaintiff about the 'Will' dated 10-6-1975, said to have been executed by Shivnarayan as claimed.

15. The first Appellate Court, however, came to the conclusion that the contesting defendants could not be deemed to be the heirs of the successors- in-interest of Shivnarayan as Devidayal, their common ancestor had ceased to be a member of the family of Shivnarayan on account of having been adopted in a different family on 19-7-1941.

16. In the aforesaid view of the matter, the first Appellate Court rejecting the claim of the contesting defendants about Shivnarayan having orally bequeathed his interest in their favour found them not to be entitled to succeed Shivnarayan on the strength of their being his heirs and legal representatives under the provisions of the Hindu Succession Act.

17. The learned counsel for the plaintiffs/appellants has strenuously urged that the concurrent findings returned against the plaintiff in regard to the genuineness of the 'Will' dated 10-6-1975, which was the basis of the title of the plaintiff is vitiated in law. The contention is that the Court below had acted with manifest illegality in comparing the signatures occurring on the 'Will' in question acting like an expert which was not permissible.

18. It may be noticed that both the parties had led opinion evidence by examining hand-writing experts in support of their cases in regard to the question relating to the execution of the 'Will' by Shivnarayan. These hand-writing experts had given different opinions.

19. The first Appellate Court has accepted the opinion evidence of the hand-writing expert examined by the defendants. While doing so, the Court below had also seen the signatures of the testator occurring on the disputed 'Will' (Exhibit P/2) and a sale deed (exhibit P/13) executed by Shivnarayan on 31-5-1968, which had been duly registered.

20. It must, however, be emphasised that the expert witness is expected to put before the Court all materials inclusive of the data which induced him to come to the conclusion and enlighten the Court on the technical aspects of the case by explaining the terms of science so that the Court although not an expert may from its own judgment on those materials after giving due regard to the expert's opinion because once the expert's opinion is accepted, it is not the opinion of the expert but of the Court. Obviously, it is the Court's opinion that matters. Further, a hand-writing expert is a competent witness whose opinion evidence is recognised as relevant under the provisions of the Evidence Act. The quality of the opinion depends upon the soundness of the reasons on which it is founded. But the Court cannot afford to overlook the fact that the signs of identification of hand-writing is

imperfect or frail one as compared to the signs of identification of finger prints. The Courts have been therefore wary in placing implicit reliance on such opinion evidence. Since such opinion evidence cannot take the place of substantive evidence, the Courts have as a rule of prudence looked for corroboration before acting on such evidence. But that is not to say that it is a rule of prudence of general application regardless of the circumstances of the case and the quality of the evidence. No hard and fast rule could be laid down in this behalf but the Court has to decide each case on its own merits what weight it should attach to the opinion of the expert. If there exist anomalous striking peculiarities and mannerisms which stand out to identify the writer, the Court could act on the expert evidence.

21. It should further be not lost sight of that before the Court could act on the expert evidence of a hand-writing expert, it must be satisfied about the genuineness of the specimen/admitted hand-writing; competence of the hand-writing expert and his being reliable and dependable witness and about the absence of bias, and further convincing and satisfactory reasons in support of the conclusions of the hand-writing expert. The Court must take extra care and caution in evaluating the expert evidence and is not prohibited to make its own ocular observations and utilise them in a case it finds striking peculiarities and mannerisms visible to even the naked eye.

22. What I further find is that the Court below has taken into consideration the relevant factors and has also taken note of the corroborative evidence which completely belies the case of the plaintiff in regard to the execution of the 'Will' in question. The anomalous striking peculiarities and mannerisms in the signatures of Shivnarayan occurring in the 'Will (Exhibit P/2) and the sale deed dated 31-5-1968 (Exhibit P/13) which had been duly registered are apparent even on a perusal thereof by a naked eye which justify the conclusions reached by the hand-writing expert whose evidence has been accepted by the Court below.

23. The concurrent findings returned by the Courts below holding that the plaintiff had failed to establish the execution of the 'Will' in question by Shivnarayan is based on an appraisal of evidence on the record and on a consideration of the

relevant material. This finding does not appear to suffer from any such legal infirmity which may justify an interference by this Court while exercising the limited jurisdiction envisaged under Section 100 of the Code of Civil Procedure, 1908. (hereinafter referred to as the Code).

24. The learned counsel for the appellant has tried to assail the impugned decree urging that even if the 'Will' is excluded from the consideration, the plaintiff was entitled to succeed Shivnarayan on account of his being an heir at law being a Khandani brother. So far as this aspect of the matter is concerned, no such case had been set up in the plaint. In fact, as has already been noticed hereinabove, in the plaint, the plaintiff had come up with clear allegation that Shivnarayan had no near heir who could succeed him and the basis of the suit was the 'Will' alleged to have been executed by Shivnarayan. Even the pedigree set up in the plaint does not appear to have been proved in accordance with law. In any case, since the plaintiff had founded his claim solely on the basis of the 'Will' which he had failed to prove and no alternative basis had either been pleaded or proved which could entitle him to succeed the interest of Shivnarayan, the submission made in this regard is not at all acceptable.

25. No other point has been urged or pressed.

26. I am clearly of the opinion that no substantial question of law is involved in this appeal which may require consideration by this Court.

27. This second appeal lacks merit and is accordingly dismissed in limine under Order XLI Rule 11, of the Code.