

Shri Abhey Chand and ors. Vs. Smt. Bimla Devi and ors.

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Court : Punjab and Haryana

Decided On : Aug-02-2005

Reported in : (2006)144PLR168

Judge : H.S. Bedi and; Viney Mittal, JJ.

Acts : Code of Civil Procedure (CPC) - Order 41, Rule 27; Himachal Pradesh Ceiling on Land Holding Act, 1972; [Indian Succession Act, 1925](#) - Sections 63

Appeal No. : Letters Patent Appeal No. 9 of 1987

Appellant : Shri Abhey Chand and ors.

Respondent : Smt. Bimla Devi and ors.

Advocate for Def. : M.L. Sarin, Sr. Adv. and; Alka Sarin, Adv.

Advocate for Pet/Ap. : Sanjay Majithia, Adv.

Disposition : Appeal dismissed

Judgement :

Viney Mittal, J.

1. The present Letters Patent Appeal has been filed by defendant No. 1 Abhey Chand, who had remained unsuccessful before the learned trial Court as well as before the learned Single Judge.

2. The suit filed by the plaintiff Smt. Bimla Wati was decreed by the learned trial Court vide its judgment and decree dated January 9, 1978 and the first appeal filed by Abhey Chand was dismissed by the learned Single Judge of this Court on October 9, 1986.

3. The dispute in the present appeal relates to the estate left behind by Ram Chand . who died on December 15, 1974. Smt. Bimla Wati, plaintiff was his daughter whereas Abhey Chand was his son. Bimla filed a suit for declaration with a consequential relief of possession of the suit land. It was pleaded by her father Ram Chand had executed a registered Will dated January 29, 1969 bequeathing his entire property in favour of the plaintiff Bimla Wati, defendants No. 2 and 3, Udey Chand and Deepak sons of Abhey Chand, respectively and some portion in favour of Kishore Chand, defendant No. 4 who was the son of Bishan Chand, brother of Ram Chand, it was averred in the plaint that Ram Chand had highly strained relations with his son Abhey Chand. There was a large number of civil and criminal litigations pending between the parties which had continued till the death of Ram Chand. During his life time, Ram Chand had severed his relations with Abhey Chand and he was even persuading the near relations to sever their relations with Abhey Chand. Accordingly, Ram Chand had executed a Will dated January 29, 1969 which was written in his own hand, and was duly attested by two witnesses, namely, Mian Gurdial Singh and Shri K.G. Soni, both Advocates of repute at Hoshiarpur. After the said Will had been got duly registered the same was deposited by Ram Chand himself with the Sub Registrar for safe custody to be opened after his death. It was further pleaded by the plaintiff that on the basis of some forged and fictitious Documents, Abhey Chand had got mutation of the estate left behind by Ram Chand in his favour. The said mutation was contrary to the rights of the parties and was liable to be ignored. On that basis, the plaintiff filed a suit on December 23, 1975. The suit was contested by defendant No. 1 Abhey Chand alone. In the written statement filed by him, various technical pleas were taken with regard to the maintainability of the suit and jurisdiction of the Court. On merits, he denied the competence of Ram Chand to execute the Will dated January 29, 1969. He further set up a Will dated March 6, 1974, alleged to have been executed by Ram Chand, in favour of the plaintiff and defendant No. 1.

4. The learned trial Court vide its judgment dated January 9, 1978 examined the controversy between the parties on the basis of the material available on the record. The plea of execution of a Will dated March 6, 1974, Ex. DI set up by defendant No. 1 was rejected and it was held that the said Will was shown to be not executed by Ram Chand at any stage. However, the Will dated January 29, 1969, Ex. PI was held to be duly proved and duly executed by Ram Chand. On the basis of the said findings, the suit filed by the plaintiff was decreed.

5. Defendant No. 1 Abhey Chand challenged the aforesaid judgment; of the learned trial Court by way of Regular First Appeal No. 314 of 1978. He reiterated his reliance upon Will dated March 6, 1974, Ex. DI. He also challenged the findings of the learned trial Court upholding the Will dated January 29, 1969, Ex. PI. The learned Single Judge re-appraised the entire evidence. On the basis of re-appraisal, the learned Single Judge also came to similar conclusions, as had been arrived at by the learned trial Judge. Accordingly, the first appeal filed by defendant No. 1 Abhey Chand was dismissed.

6. Abhey Chand has now approached this Court through the present Letters Patent Appeal.

7. At the outset, we may notice that during the pendency of the present appeal, a Civil Miscellaneous Application No. 376 of 2005 has been filed by the appellant Under Order 41 Rule 27 of the Code of Civil Procedure. A prayer has been made to grant him permission to lead additional evidence. By way of additional evidence, certain orders passed by the Prescribed Authorities under the Himachal Pradesh Ceiling on Land Holding Act, 1972 (hereinafter referred to as the Act) have been sought to be produced on record.

8. We have heard Shri Sanjay Majithia, the learned Counsel for the appellant and Shri M.L. Sarin, the learned senior counsel for the respondents and with their assistance have also gone through the record.

9. Shri Sanjay Majithia, the learned Counsel for the appellant has vehemently pressed the application for production of additional evidence. It has been argued, by the learned counsel that the documents appended with the application, sought

to be produced as additional evidence, show that a large area, out of the land in dispute originally belonging to Ram Chand, has been declared as surplus under the provisions of the Act and, as such, the suit filed by the plaintiff could not have been decreed as the same would actually amount to nullifying the orders of the Prescribed Authorities under the Act. The learned Counsel has argued that the aforesaid documents were essential for proper adjudication of the controversy and, therefore, should be taken into consideration by way of additional evidence.

10. We have duly considered the aforesaid contention of the learned Counsel for the appellant. However, we find ourselves unable to agree with the same.

11. Firstly, the perusal of the aforesaid documents shows that the same pertain to some orders passed by the prescribed Authorities under the Act in the year 1976. The present suit was filed by Bimla Wati on December 23, 1975. The written statement was filed by defendant No. 1 Abhey Chand thereafter. In these circumstances, nothing prevented the aforesaid defendant Abhey Chand from setting up any such plea by relying upon the aforesaid orders of the Prescribed Authorities in his written statement and, in any case, during the course of proceedings in the trial Court. For the reasons best known to the defendant no such plea was ever taken. The said orders passed by the Prescribed Authorities, per se, cannot be co-relate to the land in dispute. A foundation was required to be laid with regard to the identity of the land and the effect of the aforesaid orders on the rights of the parties. No such plea was ever raised nor any other foundation was laid. Accordingly, the aforesaid additional evidence, on a question of fact cannot be permitted at the stage of Letters Patent Appeal. Even otherwise, we find that the controversy in the present appeal is only with regard to the succession to the estate of Rain Chand, deceased. Both the parties have relied upon two different Wills, respectively, stated to have been executed by Ram Chand. In these circumstances, it would be wholly irrelevant for this Court to go into the question of any estate of Ram Chand having been declared as surplus or otherwise. The legal effect of the aforesaid orders passed under the provisions of the Act would be for the competent authorities to decide. For the aforesaid reasons, we do not find that the additional evidence sought to be produced by the appellant can be allowed or should be allowed. Accordingly, C.M. No. 376 of 2005 is hereby dismissed.

12. On the merits of the controversy, the learned Counsel for the appellant has argued that the Will Ex. PI could not be taken to have been duly proved in accordance with provisions of Section 63 of the [Indian Succession Act, 1925](#). To elaborate the aforesaid arguments, Shri Majithia has argued that the only one of the attesting witness K.G.Soni had since expired. Mian Gurdial Singh had merely stated that he had attested the Will Ex. PI on the asking of the testator Ram Chand and that he knew testator Ram Chand personally and had family relations with him. However, Mian Gurdial Singh had admitted that the other attesting witness K.G.Soni had not attested the Will, in his presence, although he had stated that he identified the signatures of K.G. Soni as well. On that basis, it has been argued by the learned Counsel that it was not shown at all by the plaintiff that K.G. Soni, the other attesting witness, had duly attested the will in the presence of Ram Chand. Accordingly, it has been argued that the Will in question was not proved in terms of Section 63 of the Indian Succession Act and, therefore, the suit filed by the plaintiff could not have been decreed on the basis of the said Will.

13. We have duly considered the aforesaid contentions raised by the learned Counsel for the appellant.

14. The learned trial Court as well as the learned Single Judge have discussed in detail the aforesaid argument of the defendant which was raised before them also. It is not in dispute that the Will in question Ex. PI has been written by the testator Ram Chand in his own hand writing. It has also been stated by Mian Gurdial Singh, Advocate PW2 that the Will was attested by him at the asking of the testator Ram Chand, who had been personally known to him and with whom he had family relations. Mian Gurdial Singh had also identified the signatures of K.G. Soni, Advocate and had stated that he had seen K.G. Soni signing and as such identified his signatures. However, he further stated that the signatures of Soni were not obtained in his presence. The witness has further evidence available on the record, that Abhey Chand was in constant litigation with his father Ram Chand. The litigation continued upto the death of Ram Chand. In these circumstances, it is wholly improbable that Ram Chand would have been thought of bequeathing his property in favour of his son Abhey Chand who was in serious litigation with him. The aforesaid circumstances itself shows that the Will Ex. DI was never executed

by Ram Chand.

No other point has been raised before us.

In view of the aforesaid discussion, we do not find any merit in the present appeal.
The same is accordingly dismissed.

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