

Shanti Lal Vs. Mohan Lal

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Court : Jammu and Kashmir

Decided On : Apr-26-1985

Reported in : AIR1986J& K61

Judge : K.K. Gupta, J.

Acts : [Succession Act, 1925](#) - Section 66; ; [Evidence Act, 1872](#) - Sections 101 and 104

Appeal No. : Civil Second Appeal No. 57 of 1980

Appellant : Shanti Lal

Respondent : Mohan Lal

Advocate for Def. : V.S. Malhotra, Adv.

Advocate for Pet/Ap. : R.P. Bakshi, Adv.

Disposition : Appeal allowed

Judgement :

K.K. Gupta, J.

1. Shanti Lal, appellant-plaintiff filed suit in the Court of Sub Judge, Udhampur, for the recovery of arrears of rent amounting to Rs. 1610/- against the respondent-defendant in regard to a shop situate in Main Bazar, Udhampur, leased out to him

by his mother Smt. Lakshmi Devi (died in 1977) on a monthly rental of Rs. 70/- in the year 1971. The respondent-defendant, in his written statement claimed himself to be the owner of the shop as, according to him, Smt. Lakshmi Devi during her lifetime, made will bequeathing the shop in his favour.

2. The trial Court framed the following issues in the case : --

1) Whether the mother of the plaintiff was the sole owner of the suit shop and whether she gave it to defendant by an oral will?

O. P. D.

2) Whether the plaintiff got the suit shop in his share and whether the plaintiff gave the suitshop to Smt. Lakshmi Devi in lieu of her maintenance?

O. P. P.

3) Whether the plaintiff is the owner of the suit shop after the death of his mother?

O. P. P.

4) Whether the plaintiff is entitled to recover Rs. 1,610/- as rent from 1st January, 1977 to ending of November, 1978 from the defendant at the rate of Rs. 70/- per month after the death of Mst. Lakshmi Devi?

O. P. P.

5) Relief?

Both the parties led evidence in the case and the learned Sub Judge came to the conclusion that the shop in question had been transferred to the defendant by way of a will made by Smt. Lakshmi Devi during her lifetime and as such dismissed the suit. The plaintiff aggrieved by this judgment filed appeal in the Court of District Judge, Udhampur, who too concurred with the finding of the trial Court and dismissed the appeal. As such the plaintiff has now come up in second appeal before this Court.

3. I have heard learned counsel for the parties and gone through the record before me. Learned counsel appearing for the respondent has taken a plea that both the courts below have come to a concurrent finding of fact that Smt. Lakshmi Devi has made oral will during her lifetime thereby bequeathing the suit shop in favour of the respondent and as such this finding cannot now be assailed in second appeal. No doubt, it is now almost a settled law that the concurrent findings of fact should not be gone into in second appeal but, it also cannot be denied that where the findings are perverse and not supported by any cogent proof, those can be overruled by the High Court and in that event it becomes its bounded duty to appreciate the evidence. In the light of this observation, I am appreciating the evidence placed on record by both the parties.

4. The plaintiff's case is that the suit shop was given by him to his mother in lieu of her maintenance during her lifetime and after her death, he was to succeed to the shop. The defendant has set up his claim of being owner of the shop on the basis of an oral will made by Lakshmi Devi in presence of some witnesses at the shop.

5. The documentary evidence which has been placed on record is a registered partition deed according to which the property of Shanti Lal plaintiff was divided into six shares consisting of his children, wife and mother Lakshmi Devi. The suit shop fell to the lot of Smt. Lakshmi Devi. There is a stipulation in the said deed that the shop would be used for maintenance of the lady. This deed was executed on 28-2-1971. Then on 20-3-1971, rent-deed was executed by virtue of which Mohan Lal, respondent herein, took on lease the said shop from Smt. Lakshmi Devi on a monthly rental of Rs. 70/-. It is also admitted that the lady was collecting the rent from the respondent during her lifetime. The contention of the defendant-respondent is that the lady made an oral will at his shop in presence of some persons whom he has produced as witnesses in the case. His claim is thus based on the oral will made by the lady. In AIR 1958 Bom 79, their Lordships in dealing with the law in regard to oral will have pointed out that in dealing with the cases of an oral will by a Hindu, it is beyond doubt that the burden of proving an oral will rests very heavily on the person who is desirous of propounding the oral will and he who rests his title on so uncertain foundation as the spoken words of a man, since deceased, is bound to allege as well as to prove with most precision the

words on which he relies with every circumstance of the time and place. In AIR 1977 SC 74, the following principle has been laid down :

'In cases where the execution of a Will is shrouded in suspicion, its proof ceases to be a, simple lis between the plaintiff and the defendant. What, generally, is an adversary proceeding become in such cases a matter of the Court's conscience and then the true question which arises for consideration is whether the evidence led by the propounder of the will is such as to satisfy the conscience of the Court that the will was duly executed by the testator. It is impossible to reach such satisfaction unless the party which sets up the will offers a cogent and convincing explanation of the suspicious circumstances surrounding the making of the will.'

It is thus a clear law that a person who is propounding the oral will has to prove the same beyond any shadow of doubt by cogent and convincing evidence. The defendant-respondent in the case in order to prove the oral will made by Smt. Lakshmi Devi has produced Kartar Chand, Shiv Prakash and Khem Raj as witnesses.

6. According to Kartar Chand, in the month of December, 1976, at about 3/4 p.m. he came from his house after taking his meals. In the way he saw the grandmother of the defendant sitting at the shop of the defendant demanding rent from him and she uttered that the defendant would be the owner of the shop after her death. Shiv Kumar another witness produced by the defendant has deposed that about three years ago, the grandmother of the defendant demanded rent from the defendant and said that she had to receive the rent during her lifetime after which the shop would be of the defendant. Khem Raj, the third witness examined by the defendant has stated that 3/4 years ago, grandmother of the defendant came to the shop of the defendant and demanded money from him. She then told that she had brought up the defendant who should maintain her and after her death, the shop would remain with the defendant. This evidence on the face of it is not convincing at all. All the witnesses have almost given different versions. According to Kartar Chand in December, 1976, he heard the lady saying that she would obtain rent during her lifetime after which the defendant would be the owner of the shop. This witness even did not tell about the date when this will was made. Shiv

Parkash in his statement neither gave time nor date or month when the lady made the oral will and according to him, she said that after her death the shop would be of the defendant. Khem Raj PW is also silent about the time, date month when the lady made such will and according to him, she said that after her death the shop would remain with the defendant.

7. As discussed above, the burden of proving the oral will rests very heavily on the person propounding such oral will. The defendant has produced the abovementioned witnesses who have given almost different versions in regard to the words uttered by the lady. They, have been examined after more than three years of the alleged making of oral will by the lady.

8. The plaintiff is the real son of Lakshmi Devi whereas the defendant is her grandson from her daughter. It is on record that initially the ancestral property of the plaintiff and his two brothers was divided between three brothers and the suit shop fell to the lot of the plaintiff. This happened about 35 years before the institution of the present suit. The plaintiff on 28-2-1971, partitioned his own property by execution of a partition deed dividing it in six shares to be shared by his children, wife and mother Smt. Lakshmi Devi. The suit shop came to the share of Smt. Lakshmi Devi, who, soon after the partition, rented out the same to the defendant on a monthly rental of Rs. 70/-. It is also evident from the perusal of the rent-deed that Vijay Kumar PW who is the son of the plaintiff, signed this rent-deed on behalf of the lady. It is also on record and supported by Bodh Raj, brother of the plaintiff and second son of the lady that Smt. Lakshmi Devi, during her lifetime was residing with the plaintiff who was maintaining her. These facts taken cogently, will make out that there was no occasion for the lady to make an oral will and that too in favour of the defendant to whom she had leased out the suit shop. In case she had any (such) intention, she could not have insisted for the execution of the rent-deed. In view of these facts and also unsatisfactory and unreliable evidence led by the defendant to prove the making of oral will by Lakshmi Devi, it cannot be said that the lady made any oral will bequeathing the suit shop in favour of the defendant. The finding of the Courts below in this regard, in my opinion, is perverse and is set aside.

9. The appeal as such is accepted and the judgments and decrees of both the Courts below are set aside. The defendant-respondent has not denied the arrears of rent due against him and as such suit of the plaintiff is decreed with costs.

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