

Reena Yadav and Others Vs. Satish Kumar Yadav

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Court : Delhi

Decided On : May-25-2011

Judge : Indermeet Kaur, J.

Appeal No. : R.S.A.No. 110/2009

Appellant : Reena Yadav and Others

Respondent : Satish Kumar Yadav

Advocate for Pet/Ap. : Mr.Manish Vashisht, Adv.

Judgement :

1 This appeal has impugned the judgment and decree dated 06.05.2009 which has endorsed the finding of the trial Judge dated 15.09.2004 whereby the suit filed by the plaintiff Reena Yadav seeking a decree of declaration (to the effect that Will dated 10.02.1992 executed by late Sh. Raghunath Singh Yadav is a forged and fabricated document and as a consequence the RSA No.110/2009 Page 1 of 5 consequential relief that no benefit be taken by defendant No. 1 qua the said Will) had been dismissed.

2 The plaintiff is the daughter of deceased Raghunath Singh Yadav whose Will dated 10.02.1992 is under question. The defendant Satish Kumar Yadav is her brother; he had allegedly forged the Will dated 10.02.1992 in his favour on the basis of which he had got a piece of land in Village Nangal, District Rewari mutated in his favour; another plot of land at Sri Nagar, Shakur Basti had also

been mutated in his favour on the basis of the said forged Will; this fact came to the light only on 06.03.2001 whereupon the aforementioned suit was filed with the aforementioned prayer.

3 The defendants were ex-parte; none had appeared for them. However, both the fact finding courts i.e. the trial court and the first appellate court were of the view that the plaintiff has failed to prove her case; her averment that the Will dated 10.02.1992 was forged and fabricated has not been substantiated; the report of the handwriting expert was not relied upon; it was noted that the handwriting expert had no opportunities to compare the signatures of the executant Raghunath Singh Yadav on the Will with his admitted signatures; the handwriting expert has also not RSA No.110/2009 Page 2 of 5 come into the witness box; he was not a qualified expert; the witness who had proved the handwriting expert report had not deposed to the said effect; it was also not proved that the so called admitted signatures of Raghunath Singh Yadav were in fact his admitted signatures; the report of the handwriting expert Ex. PW- 1/A was thus disbelieved. These are two concurrent findings returned by both the two courts below.

4 This is a second appeal. It has been admitted and on 21.03.2011, the following substantial question of law was formulated:-

"Whether the findings in the impugned judgment dated 06.05.2009 qua the disputed will of Late. Sh. Raghunath Singh Yadav dated 10.02.1992 dismissing the suit of the plaintiff are perverse? If so, its effect?"

5 On behalf of the appellant, it has been urged that the finding of the court below is perverse; the defendant had not come into the witness box to dispute the averments in the plaint; the plaintiff was entitled to the relief.

6 There is no dispute to the settled proposition of law that a litigant who comes to the Court, before he is granted any relief, must plead and prove his case. Plaintiff has averred that the Will of RSA No.110/2009 Page 3 of 5 Raghunath Singh Yadav dated 10.02.1992 was forged and fabricated; to substantiate this

submission the report of the handwriting expert Ex. PW-1/A had been brought on record; the handwriting expert who had prepared this report had not come into the witness box; there was nothing to show that the handwriting expert had been in a position to examine the admitted signatures of the executant Raghunath Singh Yadav with the disputed signatures on the Will; there was no record to show that the signatures which have been given to the handwriting expert were in fact the admitted or genuine signatures of deceased Raghunath Singh Yadav. Both the fact finding courts have returned a positive and concurrent finding against the plaintiff holding that he has not been able to prove the said document i.e. the Will dated 10.02.1992 was a forged and fabricated document. This finding in no manner can be said to be perverse. Relevant extract of the impugned judgment qua this finding has been inter- alia returned as under:-

" ..The Plaintiff has to stand on his own legs and supposed to prove his case in accordance with law. The record reveals that the Appellant / Plaintiff relied on a report of handwriting expert to prove that the Will dated 10.02.1992 is forged and fabricated. The original Will was admittedly in possession of the Respondent / Defendant no.1 only. The alleged handwriting expert, therefore, had no opportunity to compare the signatures of the executant Shri Raghunath Singh Yadav on the Will with his admitted signatures. Further, the Appellant / RSA No.110/2009 Page 4 of 5 Plaintiff failed to examine the said Handwriting Expert in the court to prove his report. The Appellants failed to lead any evidence to prove that the said Handwriting Expert was a certified/recognised expert. The Appellants / Plaintiffs also did not state anything about the qualification / skill / expertise of the said Handwriting Expert. The said report was given by the alleged Handwriting Expert after comparing the signatures on the copy of the Will with certain other signatures of Shri Raghunath Singh Yadav. But it was not proved that the signatures provided to the Handwriting Expert were the admitted / genuine signatures of late Shri

Raghunath Singh Yadav. The Trial Court, therefore, rightly disbelieved the report Ex.PW1/A of the Handwriting Expert."

7 It calls for no interference.

8 Substantial question of law is accordingly answered in favour of the respondent and against the appellant. Appeal has no merit. Dismissed.

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