

Hans Raj and Others Vs. Ran Singh

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Court : Himachal Pradesh

Decided On : Aug-12-2011

Judge : Rajiv Sharma

Appeal No. : RSA No. 291 of 2002

Appellant : Hans Raj and Others

Respondent : Ran Singh

Advocate for Def. : Mr. Raman Sethi

Advocate for Pet/Ap. : Mr. Ashok Sood

Judgement :

RAJIV SHARMA, J.

1. This regular second appeal is directed against the judgment and decree passed by the learned Additional District Judge, Solan on 23.3.2002 in Civil Appeal No.51-S/13 of 2001.

2. Material facts necessary for adjudication of this regular second appeal are that the respondent/plaintiff (hereinafter referred to as “the plaintiff” for convenience sake) instituted a suit for declaration and injunction that he was owner in possession of the suit land and the appellants/defendants (hereinafter referred to as “the defendants” for convenience sake) had no right, title and interest over the

same in any manner whatsoever, consequently defendants be restrained from interfering with the ownership and possession of the plaintiff over the suit land in any manner whatsoever. According to the plaintiff, Tara Chand alias Taru was owner in possession of the suit land comprised in Khata No.89, Khatauni No.104, Khasra Kitas 5, measuring 1 bigha 14 biswas situate in Mauza Kulhariwala, Pargana Doon, Tehsil Kasauli, District Solan. He died on 31.1.1996 leaving behind the plaintiff as his sole legal heir. According to him, Shri Tara Chand has adopted him as his son as per the custom prevailing in the area. He has been serving Shri Tara Chand. It is further averred by him that Shri Tara Chand had executed a Will in his favour out of love and affection. He has informed the Halqua Patwari about the factum of death of Tara Chand and requested him to enter a mutation of inheritance in his favour. However, the Halqua Patwari has entered the mutation in favour of the defendants. According to him, Shri Tara Chand had not executed subsequent Will dated 28.1.1996, Ex.DW-2/A in favour of defendant, Hans Raj.

3. The suit was contested by the defendants. According to the defendants, though the Will dated 20.4.1990 was executed, however, the same was revoked by execution of the subsequent Will dated 28.1.1996. According to them, the plaintiff has never approached the revenue authorities regarding the Will in his favour as he knew the fact of revocation of the Will executed in his favour by execution of a new Will dated 28.1.1996 in favour of defendants.

4. The trial Court framed the issues on 18.5.1998. The trial Court dismissed the suit on 31.7.2001. Plaintiff preferred an appeal before the learned Additional District Judge, Solan. He partly allowed and partly dismissed the appeal on 23.3.2002. He held that Tara Chand had executed a valid and legal Will in favour of the plaintiff vide Ex.PW-2/A. He declared that the plaintiff was legally entitled to inherit the suit land on the basis of Will Ex.PW-2/A. He held the Will Ex.DW-2/A dated 28.1.1996 to be illegal and void. He also held that since the plaintiff was not in possession of the suit land, he was entitled for the relief of possession of the suit land. Consequently, decree for possession of the suit land was passed in favour of the plaintiff.

5. This regular second appeal has been preferred against the judgment and decree dated 23.3.2002. It was admitted on the following substantial questions of law on 8.7.2002:-

1. Whether there can be a presumption that the will is surrounded by a suspicious circumstance merely on account of the fact that the testator has died a few days after the execution of the will?

2. Whether once the signatures of the testator on the will are proved and the witnesses and scribe prove the will in accordance with law, there can be any suspicious circumstance with regard to the will?

3. Whether there can be a properly constituted plaint without the signatures of the plaintiff?

4. Whether a plaint signed by some other person can form the basis of a suit especially when there is nothing on record to show that said person was duly authorised attorney of the plaintiff?

5. Whether there has been total misreading and misinterpretation of the oral and documentary evidence in the present case which has led to a totally incorrect judgment?

6. Mr. Raman Sethi, learned counsel for the defendants has supported the judgment and decree passed by the learned trial Court. According to him, the defendants have duly proved the Will Ex.DW-2/A. He then contended that the suit has not been properly instituted by the plaintiff.

7. Mr. Ashok Sood, learned counsel for the plaintiff has supported the judgment and decree passed by the learned first appellate Court below.

8. I have heard the learned counsel for the parties and gone through the pleadings carefully.

9. Since all the substantial questions of law are interconnected and interlinked, they were taken up together for hearing and are taken up together for determination in order to avoid repetition of discussion of evidence.

10. Plaintiff has appeared as PW-1. According to him, Shri Tara Chand has executed a Will in his favour. Tara Chand died three years back. Tara Chand was unmarried and he was in possession of the suit land. According to him, a false Will has been set-up by the defendants and they have started interfering in the suit land.

11. PW-2, Shiv Ram has deposed about the execution of the earlier Will Ex.PW-1/A. According to him, Tara Chand has executed a registered Will in favour of plaintiff. The Will was scribed by the Petition Writer and the contents of the Will were read over to Shri Tara Chand. Shri Tara Chand after admitting the contents of the Will as correct marked his thumb impression. The Will was registered in the office of Sub-Registrar. Tara Chand deceased had admitted the contents of the Will before the Sub-Registrar as correct.

12. PW-3, Shri Madan Gopal has deposed that the plaintiff was the adopted son of Tara Chand. He was served by the plaintiff. Tara Chand has died on 31.1.1996. He was seriously ill and was unconscious for 5-7 days before his death. According to him, Tara Chand has not executed any Will in favour of defendant Hans Raj. PW-4, Ram Pratap has also deposed that Tara Chand had died on 31.1.1996. He was served by the plaintiff. Shri Tara Chand was not in his senses prior to 10-15 days of his death. According to PW-5, Ram Lal, the mental condition of Tara Chand was not sound before his death.

13. Now the Court will advert to the evidence led by the defendants to prove the Will Ex.DW-2/A.

14. DW-1, Hans Raj has deposed that Tara Chand was his grand-father. He used to reside with him. According to him, the Will has been executed by Tara Chand in his favour and in favour of his brother and mutation has also been attested on the basis of Will in favour of the defendants. He has further stated that Tara Chand was patient of Asthma. He was treated in Ayurvedic Dispensary, Barotiwala. He died on 31.1.1996. He was 72-73 years old at the time of his death.

15. DW-2 Karam Chand has scribed the Will Ex.DW-2/A. According to him, the Will was executed by Tara Chand in favour of Hans Raj, which was scribed by

him. He deposed that many persons had assembled when Tara Chand executed the Will. However, he has deposed that the contents of the Will were read over to deceased Tara Chand. The Will was written in presence of Som Nath, Ram Gopal, Bhagwan Dass, Lumberdar, Ram Singh and Luxmi, who have signed the Will as marginal witnesses. He has admitted that Urdu words were dictated by Bhagwan Dass, DW-3. He has also admitted that Tara Chand was sick for 2-3 months before his death. He was patient of Asthma. He died on 28 January, 1996.

16. DW-3, Bhagwan Dass is the marginal witness. He has also admitted that Tara Chand used to remain sick. According to him, Tara Chand had executed Will Ex.DW-2/A. The contents of the same were read over to Tara Chand. Tara Chand after admitting the contents of the Will as correct marked his thumb impression on the same. According to him, the last rites were performed by Hans Raj. DW-4, Som Nath has also deposed that Tara Chand used to reside with Hans Raj. Will Ex.DW-2/A was written in his presence and the contents of the same were read over to deceased Tara Chand. Tara Chand after admitting the contents of the Will to be correct thumb marked the same. The land was cultivated by Hans Raj.

17. What emerges from the statements of the witnesses is that Tara Chand was an old man and was suffering from Asthma. The earlier Will was executed on 20.4.1990. PW-1 and PW-2, Shiv Ram have deposed about the execution of the Will, Ex.PW-2/A. The Will Ex.PW-2/A was duly registered with the Sub-Registrar.

18. Now, as far as Will set up by the defendants, Ex.DW-2/A is concerned, the Will is not registered. The Will was executed on 28.1.1996 and Tara Chand died on 31.1.1996. It is established on record that Will dated 28.1.1996 was not dictated by Tara Chand, but the same was dictated by Bhagwan Dass. The witnesses produced by the defendants have also admitted that Tara Chand was critically ill before his death. DW-2, Karan Chand in his cross-examination has deposed that Tara Chand has died on 28.1.1996. However, the fact of the matter is that Tara Chand has died on 31.1.1996. The Will Ex.DW-2/A is shrouded by suspicious circumstance and the same has not been removed by the defendants. The Will Ex.PW-2/A is duly registered and proved by the plaintiff.

19. Now as far as the contention of Mr. Raman Sethi, learned counsel for the defendants that the suit was not maintainable is concerned, suffice to say that the plaintiff while appearing as PW-1 has deposed that the suit be decreed and he has denied the suggestion that the suit was filed only by Madan Gopal. Madan Gopal has appeared as PW-3. He has testified that he has filed the suit as general attorney of the plaintiff and General Power of Attorney was already on the record of trial Court.

20. Thus, the learned first appellate court has correctly appreciated the oral and documentary evidence adduced by the parties while coming to the conclusion that Will Ex.DW-2/A was shrouded by suspicious circumstance, which has not been removed by the defendants.

21. Accordingly, in view of the observations and discussions made hereinabove, there is no merit in this regular second appeal and the same is dismissed. The judgment and decree passed by the learned Additional District Judge, Solan in Civil Appeal No.51-S/13 of 2001, dated 23.3.2002 is upheld. The pending application(s), if any, also stands disposed of. No costs.

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