

(2017) 04 MP CK 0116
In the Madhya Pradesh High Court
Case No : 136 of 2017

Abdul Aziz S/o Haji Nanha

APPELLANT

Vs

Manoramabai W/o Bhanwarlal and others

RESPONDENT

Date of Decision : 17-04-2017

Acts Referred:

Succession Act, 1925, Section 63 -
Execution of unprivileged wills

Evidence Act, 1872, Section 68 - Proof of
execution of document required by law to be attested

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Citation : (2017) 04 MP CK 0116

Hon'ble Judges : Vijay Kumar Shukla

Bench : Single Bench

Advocate : Pranay Verma, Avinash Zargar, Ashutosh Tiwari

Judgement

1. Heard on admission.

2. The instant appeal has been preferred under Section 100 of the Code of Civil Procedure [for brevity "the CP"] challenging the judgment & decree, dated 7-01-2017 passed in Civil Appeal No.2A/2012, affirming the judgment & decree, dated 30-11-2011 passed in Civil Suit No.61-A/2002 by the learned First Civil Judge, Class-I, Harda, District Harda, whereby the appeal filed by the appellant has been dismissed affirming the judgment and decree passed by the learned Civil Judge whereby the suit filed by the respondent No.1-plaintiff has been allowed.

3. As the facts would unveil, the respondent No.1-plaintiff filed a civil suit for possession of the properties situated at Khasra No.2/1, admeasuring 20.5, Khasra No.10, admeasuring 2.40 acres and Khasra No.14, admeasuring 2.21 acres and also prayed for relief of declaration as an absolute owner of the said property. Before taking consideration the facts of the present case, it is appropriate to mention genealogy of the present case : "VERNACULAR MATTER

OMITTED"

4. The plaintiff submitted that the property in question was her ancestral property. It is not in dispute that the property was belonging to Umrao, as he had got the said property in partition took place long back in the family. Umrao had three sons, namely, Kunjilal, Biharilal and Tulsiram. His brother Kunjilal died issueless. The plaintiff is the daughter of Tulsiram and after death of her mother - Tarabai, she is the sole successor of the property of Tulsiram. It is submitted that the name of Biharilal, her uncle of the plaintiff was recorded in the disputed property, being "Karta" of the Joint Hindu Family. After death of her father - Tulsiram, she continued to cultivate the land in question along with her mother. It is further submitted that Biharilal during his lifetime had sold his share of about 10 acres of the land. He had no issue and after his death name of the original defendant - Smt. Sarjubai was recorded in the revenue record in respect of entire suit land erroneously. It is further submitted that Sarjubai had never adopted the appellant - Narayan. It was also further denied that she had executed any adoption deed, on 24-01-1997 or any Will in favour of Narayan. On the basis of a forged and fictitious Will the defendant No.3 had illegally obtained possession of the suit land. It is further pleaded that the defendant No.3 Narayan being stranger and not a member of the family, therefore, he has no right to inherit the property of the family of Umrao.

5. The defendant No.1, Sarjubai, died during the pendency of the suit. A written statement was filed on her behalf with the verification of the defendant No.3, Narayan. It is also seen from the record that the defendant No.3/appellant, Narayan filed his separate written statement in the matter. In the written statement which was filed by Narayan, submitted that since Biharilal had no issue, therefore, he was adopted by executing an adoption deed on 24-01- 1997. It was also claimed that on the same date, i.e. 24-01-1997 a Will was also executed in favour of the defendant No.3 - Narayan. It is also to be noted that the present appeal is filed on behalf of Smt. Sarjubai who is dead, showing the defendant No.3, Narayan as her legal representative on the basis of adoption and Will alleged to be executed by original defendant Sarjubai.

6. On the basis of the aforesaid pleadings, the trial Court framed Issues No.1 to 9 and two additional issues in respect of the adoption and Will deed. The trial Court considered first, the issues No.10 and 11 regarding adoption and Will deed. The defendant No.3 - appellant, who has been substituted as a legal heir of the defendant No.3 is not found to be entitled to get the property of Biharilal on the basis of the adoption and Will deed executed by his wife, Smt. Sarjubai. The other issues had become secondary as the defendant No.3 would not have any title in the property of Biharilal, as he is not a member of the Joint Hindu Family. The trial Court recorded a specific finding that the adoption deed is not proved and the Will executed in favour of the defendant - Narayan by Smt. Sarjubai was found to be suspicious and surreptitious, as the adoption and Will deed were executed on the same date taking into other suspicious circumstances. The

Courts have also taken into consideration that if the defendant No.3 was an adopted son of the original defendant No.1, Smt. Sarjubai, then there was no occasion to execute the Will that too on the same date.

7. After considering the aforesaid issues the trial Court also considered the Issue Nos.1 to 9 and held that after death of Kunjilal, brothers Biharilal and Tulsiram continued to cultivate the suit land jointly. The trial Court further held that the name of Biharilal was recorded in the revenue records being the "Karta" of the Joint Hindu Family and, therefore, Tulsiram, his brother was entitled for half share on the said property. It was further held by the trial Court that after death of Tulsiram, the plaintiff and her mother continued in the Joint Hindu Family and Biharilal had sold more than his share in the suit land, therefore, they have got title of ownership on the suit land and are entitled for the possession of the suit land from the defendant - Narayan, within a period of three months and they will also be entitled to get their names mutated in the revenue records.

8. The trial Court after extensive deliberation and consideration of the entire evidence in proper perspective, in paras 21 and onwards found that the Will was not proved to be beyond suspicion and the defendant could not discharge his burden, as required to prove execution of a Will by virtue of Section 63 of the Succession Act, 1925 read with Section 68 of the Evidence Act, 1872. Besides, the trial Court has taken into consideration the testimony of Ramnarayan (DW-2), who is said to be the attesting witness and also the evidence of Balakdas (DW-3), who is said to have written the Will in question. In this regard paras 30 to 33 being relevant, are extracted hereunder: "VERNACULAR MATTER OMITTED"

These findings have been further affirmed by the lower appellate Court while evaluating the oral and documentary evidence in proper perspective. Counsel for the appellant could not point out any illegality or perversity in the findings recorded by both the Courts.

9. Being aggrieved by the said judgment and decree passed by both the Courts, the present appeal has been preferred and the

appellant seeks to overturn the concurrent findings of the Courts below.

10. Counsel appearing for the appellant canvassed the sole contention that both the Courts below have erred in holding that the "Will" executed by Smt. Sarjubai in favour of Narayan was suspicious because the adoption deed and the Will deed were executed on the same date, i.e. 24-01-1997. No other point was canvassed by the counsel for the appellant.

11. So far as the finding as regards adoption deed found to be forged and fabricated and not in accordance with the provisions envisaged under Section 11 of Hindu Adoptions and Maintenance Act, 1956 [for short "the 1956 Act"] is concerned, they have not been challenged by the counsel for the appellant. However, both the courts have recorded concurrent findings in respect

of adoption deed that it was not as per requirements of Section 11 of the 1956 Act. Even otherwise, the said view is in conformity with the provisions of Section 11 of the 1956 Act which has been held to be mandatory by the Apex Court and onus of proof lies on the person who is claiming right on the basis of an adoption or Will deed in the cases of Harnek Singh vs. Pritam Singh and others, (2013) 4 SCC 458 and Pentakota Satyanarayana and others vs. Pentakota Seetharatnam and others, (2005) 8 SCC 67 .

12. So far as the contention of the appellant that the Courts below ought to have not held that the Will was suspicious, merely because the adoption deed was executed on the same date sans merit. It is seen from the records that the courts have not only disbelieved the "Will" solely on the ground that the adoption deed

was executed on the same date, but also have taken into consideration the oral and documentary evidence. The burden was on the appellant to prove execution of the Will to dispel suspicious circumstances under which the Will was executed. This view of mine is further fortified by the judgments of the Apex Court rendered in the case of Mahesh Kumar (dead) by LRs vs. Vinod Kumar and others, (2012) 4 SCC 387 as well law Pentakota Satyanarayana and others (supra). Regarding burden of proof in respect of a Will validly executed and claiming genuine document, is on the propounder. In the case of Niranjana Umeshchandra Joshi vs. Mrudula Jyoti Rao, AIR 2007 SC 614 [para 17], it has been held that there are several circumstances which have to be described as suspicious circumstances; (i) when a doubt is created in regard to the condition of mind of the testator despite his signature on the Will; (ii) when the disposition appears to be unnatural or wholly unfair in the light of the relevant circumstances; and (iii) where propounder himself takes prominent part in the execution of Will which confers on him substantial benefit. The same view has been reiterated by the Supreme Court in the case of Mahesh Kumar (Dead) by LRs vs. Vinod Kumar and others, (2012) 4 SCC 387 .

13. Both the courts have rightly held in the present case on extensive evaluation of facts and evidence that the Will was highly suspicious as on the same date, the adoption deed and the "Will" in favour of the appellant was executed who is beneficiary of both, which clearly falls within the circumstances described by the Apex Court, as discussed hereinabove. In addition to the same filing of the written statement by the appellant on behalf of original defendant, Smt. Sarjubai and separate written statement for himself and now presenting the present appeal on behalf of original defendant as her legal representative are certainly strong suspicious circumstances which the appellant/defendant No.3 failed to dispel.

14. Thus, in view of the aforesaid discussion and enunciation of law discussed in preceding paragraphs, I do not find any illegality in respect of the findings ascribed by the Courts below and this Court is of the considered opinion, that the arguments advanced by the counsel for the appellant cannot be countenanced in

exercise of jurisdiction under Section 100 of the Code of Civil Procedure. Entire gamut of matter is in the realm of facts. The findings ascribed by the Courts below are impregnable in nature and no question of law, much less substantial question of law arises warranting interference under Section 100 of the CPC.

15. Resultantly, the appeal stands dismissed. No order as to costs.