

(1975) 05 SHI CK 0006
In the High Court Of Himachal Pradesh
Case No : R. S. A. No. 9 of 1970

Ram Dass and Others

APPELLANT

Vs

Kishan Dev and Another

RESPONDENT

Date of Decision : 19-05-1975

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (1975) 4 ILR HP 656

Hon'ble Judges : R.S. Pathak, C.J

Bench : Single Bench

Advocate : Chhabil Dass, for the Appellant; S. Malhotra, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Pathak, C.J.—This is a Defendant's second appeal u/s 100 of the CPC arising out of a suit for possession.

2. Kariloo and Ragha were real brothers. The Plaintiff is grandson of Kariloo. Ragha had a son Chintu. Chintu was the last male owner of the land in dispute. Chintu died on June 12, 1961 leaving the Defendant Smt. Durgi as his natural heir. On Durgi setting herself up as the sole heir of Chintu, the Plaintiff claimed that he was entitled to the estate of Chintu on the basis of a will alleged by him to have been executed by Chintu in his favour. In the consequent dispute between the Plaintiff and the Defendant, who stood in a sense in the relationship of cousin brother and sister, the elders of the village intervened and a settlement was arrived at between the parties under which the Plaintiff was entitled to a one-third share and the Defendant to the remaining two-third share in the land in dispute. The terms of the settlement were reduced to writing and the document was registered. The Plaintiff alleges that subsequently the Defendant refused to accept the Plaintiff's rights to a one-third share in the estate, and mutation in respect of the entire land was sanctioned in her favour accordingly. He filed a suit, out of which the present appeal arises, praying for possession of the entire estate on the basis of the will and alternatively for

possession of a one-third share on the basis of the settlement.

3. In resisting the suit, the Defendant admitted the relationship between the Plaintiff and Chintu, but denied that any will had been executed by Chintu in his favour. She also admitted the settlement between the parties but asserted that the Plaintiff had approached the Sarpanch and a Panch for a share in the land with the assurance that he would treat the Defendant as his sister and her sons as his nephews for all time, and upon that the Sarpanch and Panch compelled the Defendant to agree to surrender a one-third share in the land in dispute to the Plaintiff. She alleged that the agreement, to which she was compelled to be made party, was brought about by undue influence and fraud. It was also pleaded that the Plaintiff had admitted that Chintu had executed no will in his favour.

4. The trial court held that no will had been executed by Chintu in favour of the Plaintiff but on the basis of the settlement mentioned above it decreed the suit for possession of a one-third share in the disputed land. The Defendant appealed to the lower appellate court. During the pendency of the appeal she died and her legal representatives were brought on the record. The lower appellate court has dismissed the appeal. It has found that the settlement relied on by the Plaintiff was a valid transaction, the Defendant having agreed to it in consideration of love and affection, and the Plaintiff was entitled under it to a one-third share. It affirmed the findings of the trial court that the will set up by the Plaintiff was a forgery and could constitute no consideration for the settlement.

5. After hearing learned Counsel for the parties, it seems to me that this second appeal must fail. It has been urged for the Appellant that on the finding that the will was a forgery it must be taken that there was no consideration for the settlement and, therefore, the settlement is invalid and cannot constitute the source of any claim by the Respondent. Reliance has been placed on *Chuni Lal v. Maula Bakhsh* AIR 1936 Lah. 6 AIR 1948 7 (Privy Council) and *Tinsukia Municipal Board and Anr. v. Harikissen Lohia and Ors.* AIR 1957 Gau10 . It seems to me that the terms of the settlement and the circumstances in which it was brought about clearly demonstrate that a different consideration prevailed between the parties for coming to an agreement. The evidence discloses that the village elders were approached by the Respondent to intercede with Smt. Durgi to give him a share in the land in dispute, and apparently much was made of the relationship between the parties and the circumstances that the dispute between them would be ruinous. Smt. Durgi pleaded in the written statement that the Respondent had admitted that Chintu had made no will in his favour. It is clear that if she was influenced into agreeing to give a one-third share in the land to the Respondent it was because of the relationship which existed between the parties. It can be safely concluded that the elders had referred to that relationship when they alluded to the desirability of concluding a dispute which had arisen within the family. There is justification for holding that an appeal was made to the emotions of Smt. Durgi and that under the influence of family

feeling and affection at that moment, she agreed to the arrangement proposed by the village elders. It may also be pointed out that an arrangement for promoting peace and goodwill between members of a family is by itself good consideration for a family settlement, and reference may be made to Mt. Latif Jahan Begam Vs. Md. Nabi Khan, The lower appellate court has found that the agreement is not vitiated by any undue influence and that no particular of fraud have been pleaded by Smt. Durgi. The concurrent findings of the courts below in that regard cannot be successfully challenged in this second appeal.

6. In the result the appeal has no force and is dismissed, but there is no order as to costs.

Appeal dismissed.