

(1984) 11 SHI CK 0001
In the High Court Of Himachal Pradesh
Case No : L.P.A. No. 70 of 1975

Ram Dass and Others

APPELLANT

Vs

Kishan Dev and Another

RESPONDENT

Date of Decision : 29-11-1984

Acts Referred:

Contract Act, 1872 — Section 25

Citation : AIR 1986 HP 9 : (1984) 13 ILR HP 820

Hon'ble Judges : V.P. Bhatnagar, J;H.S. Thakur, J

Bench : Division Bench

Advocate : Chhabil Dass, for the Appellant; H.K. Bhardwaj, for the Respondent

Final Decision : Dismissed

Judgement

H.S. Thakur, J.—This is a defendant's Letters Patent Appeal against the judgment of the learned single Judge, dated May 19, 1975. Kariloo and Ragha were real brothers. Ragha had a son Chintu who was the last male owner of the land in dispute. He, however, died on June 21, 1961, leaving defendant Smt. Durgi as his natural heir. Smt. Durgi set up her claim as the sole heir of Chintu. On the other hand, 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. It may be pointed out that the plaintiffs grandfather Kariloo and Chintu's father Ragha were real brothers and, as such, the plaintiff and the defendant 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 into writing and the document was registered. The plaintiff alleges that subsequently the defendant refused to accept the plaintiffs right to a one-third share in the estate and mutation in respect of the entire land was sanctioned in favour of the defendant. Consequently, the plaintiff filed a suit out of which the present Letters Patent 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.

2. The defendant resisted the suit but admitted the relationship between the plaintiff and Chintu. The defendant however, denied that any will had been executed by Chintu in favour of the plaintiff. The defendant further 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 one-third share in the land in dispute to the plaintiff. The defendant alleged that the agreement to which she was compelled to be made party was brought about by undue influence and fraud. It was also alleged that the plaintiff had admitted that Chintu had executed no will in his favour.

3. The trial Court held that no will had been executed by Chintu in favour of the plaintiff but, on the basis of the settlement, it decreed the suit for possession of one-third share in the disputed land. The defendant preferred an appeal to the District Judge, Kangra Division at Dharamsala but the learned Additional District Judge dismissed the appeal of the defendant and affirmed the decree and judgment of the trial Court. The defendant died during the pendency of the appeal and her legal representatives were brought on the record. The legal representatives of the defendant preferred an appeal against the judgment and decree passed by the learned Additional District Judge to this Court. The learned single Judge of this Court considering the facts and circumstances of the case, however, dismissed the appeal with no order as to costs.

4. The legal representatives of the defendant have ultimately filed this Letters Patent Appeal. The only contention that has been raised on behalf of the defendant is that the so-called settlement arrived at between the parties is void as the same was without consideration. He has emphasised that since the will put forward by the plaintiff was a forged document, he could not claim any right in the property in dispute. The learned counsel presumably addressed his arguments under the impression that the settlement deed was not registered. The said deed was shown to the learned counsel and he was satisfied that the same was properly registered.

5. In order to repel the argument of the learned counsel for the defendant, it is desirable to refer to Section 25 of the Contract Act. The relevant portion of the same is extracted for a ready reference :

"25. An agreement made without consideration is void, unless -

(1) it is expressed in writing and registered under the law for the time being in force for the registration of documents, and is made on account of natural love and affection between parties standing in a near relation to each other; or unless

(2) & (3)"

6. It appears to us that the terms of the settlement and the circumstances in which it was brought about clearly demonstrate that different considerations prevailed between the parties for coming to a settlement. The evidence discloses that the village elders were approached by the plaintiff to intercede with Smt. Durgi Devi 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. As pointed out earlier above, the plaintiff was not a stranger but was nearly related to Smt. Durgi. As such, it can be safely concluded that the elders had referred that relationship when they alluded to the desirability of concluding a dispute which had arisen within the family. It is correctly observed by the learned single Judge that there was justification in 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 is further observed by the learned single Judge that an arrangement for promoting peace and goodwill between the members of a family is by itself good consideration for a family settlement. Reference was made to the decision in Mt. Latif Jahan Begam Vs. Md. Nabi Khan, .

7. It is not disputed that the so-called settlement is in fact an agreement between the parties to resolve the dispute. The same is in writing and is registered and apparently made on account of natural love and affection between the parties standing in a near relation to each other. On this account alone, even if no material consideration was paid by the plaintiff, he is entitled to one-third share in the property as settled between the parties.

8. For the foregoing reasons, there is no merit in this appeal and the same is dismissed with no order as to costs.