
(2016) 02 P&H CK 0137
In the Punjab And Haryana At Chandigarh
Case No : RSA-5031 of 2011 (O&M)

Sham Singh

APPELLANT

Vs

Kashmir Kaur And Another

RESPONDENT

Date of Decision : 11-02-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2016) 3 HLR 59 : (2016) 3 LawHerald 2354 : (2016) 2 PLR 353

Hon'ble Judges : Darshan Singh, J.

Bench : Single Bench

Advocate : Karan Chaudhary, Advocate, Karminder Singh, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Darshan Singh, J. (Oral) - This regular second appeal has been directed against the judgment and decree dated 05.9.2011 passed by the learned Additional District Judge, Gurdaspur vide which the appeal filed against the judgment and decree dated 19.08.2010 passed by the learned Civil Judge (Junior Division), Gurdaspur, has been dismissed.

2. Plaintiff-respondent No.1-Kashmir Kaur @ Jasbir Kaur widow of Darshan Singh has filed the suit for recovery of Rs. 1 lac along with interest on the grounds inter alia that the husband of the plaintiff namely Darshan Singh has deposited a sum of Rs. 50,000/- in the post office of Village Tibber, Tehsil and District Gurdaspur under Kisan Vikas Patra Scheme. Appellant-defendant No.1 who is the son of the real sister of Darshan Singh (deceased) has withdrawn Rs. 1 lac on maturity of the said Kisan Vikas Patras from the post office of defendant/respondent No.2. It is further pleaded that he was not entitled to and has no right to withdraw the amount. The defendant No.2 was also not competent to disburse the said amount to the appellant-defendant No.1. Plaintiff-respondent No.1 alone being the widow and legal heir of deceased Darshan Singh was entitled to the said amount. Hence, the suit.

3. Appellant-defendant contested the suit on the grounds inter alia that he was duly appointed nominee by deceased Darshan Singh in the post office empowering him to withdraw the amount after his death. As such, he has legally withdrawn the amount as the same belongs to him after the death of Darshan Singh. It was further pleaded that Darshan Singh had executed a legal and valid Will dated 13.3.2004 in favour of defendant No.1 in his sound disposing mind and health, as he used to serve him during his life time. Deceased-Darshan Singh used to consider him as his son. Thus he pleaded that plaintiff-respondent No.1 has no right, title or concern with the amount in dispute.

4. Defendant-Respondent No.2 also contested the suit on the ground that the depositor had made nomination in favour of appellant-defendant No.1-Sham Singh, so he was entitled to receive the payment on preferring his claim and his claim was settled on 22.01.2005. He has already received the payment on 22.10.2005.

5. The plaintiff-respondent No.1 has filed the replication.

6. From the pleadings of the parties, the following issues were framed by the learned trial Court :-

"1) Whether the plaintiff is entitled to recover Rs. 1,00,000/- from the defendant? OPP

2) Whether the suit is not maintainable? OPD

3) Whether the plaintiff is estopped from filling the present suit by her own and conduct? OPD

4) Whether the suit is bad for non joinder of necessary parties? OPD

5) Whether the suit is time barred? OPD

6) Relief."

7. The learned trial Court on appreciation of the evidence and material on record, decreed the suit with costs filed by plaintiff-respondent No.1 for recovery of Rs. 1 lac along with interest at the rate of 9% per annum from 22.10.2005 against the appellant. However, the suit of the plaintiff against defendant-respondent No.2 was dismissed.

8. Aggrieved with the aforesaid judgment and decree, appellant-defendant No.1 preferred the appeal. The same was also dismissed by the learned Additional District Judge, Gurdaspur vide impugned judgment and decree dated 5.9.2011. Hence this regular second appeal.

9. I have heard learned counsel for the parties and have gone through the file carefully.

10. Initiating the arguments, learned counsel for the appellant contended that the appellant was appointed as nominee by deceased Darshan Singh who had

deposited the amount with defendant-respondent No.2 so being his nominee and legal heir of deceased-Darshan Singh, the appellant was competent to withdraw the amount from the post office. Deceased has also executed a Will dated 13.3.2004 in his favour so he has legally withdrawn the amount from the post office and the suit filed by plaintiff-respondent No.1 has been wrongly decreed.

11. On the other hand, learned counsel for plaintiff-respondent No.1 contended that the plaintiff was the sole legal heir of deceased-Darshan Singh being his widow and was legally entitled to recover the amount from the post office. He contended that the nomination cannot override the provisions of the Hindu Succession Act, 1956 (hereinafter called "the Act").

The plaintiff-respondent No.1 was the sole 1st class legal heir of deceased-Darshan Singh and the Courts below had rightly passed the decree for recovery in her favour. To support his contention, he relied upon "Amar Singh v. Shashi Bala, 2003(2) Civil Court Cases 294".

12. He further contended that the Will propounded by the appellant had already been discarded in Civil Suit No.397 of 25.11.2004 titled as Sham Singh v. Kashmir Kaur. The Will in question was also not brought on record.

13. I have duly considered the aforesaid contentions.

14. The appellant-plaintiff has alleged that he was entitled to receive the money deposited by deceased Darshan Singh with post office on two grounds that (i) deceased Darshan Singh has executed the Will dated 13.3.2004 in his favour and (ii) he was appointed as nominee by him.

15. As far as the Will propounded by the appellant is concerned, the same has not been brought on record of this case by the appellant nor any evidence to prove the execution of the said Will, has been produced.

16. The learned trial Court has also categorically mentioned that the plaintiff-respondent has brought on record the copy of judgment dated 3.3.2007 (Ex.P1) and the decree sheet (Ex.P2) passed in Civil Suit No.397 of 25.11.2004 in case titled as "Sham Singh v. Kashmir Kaur". In that suit, the learned Civil Judge has discarded the Will propounded by the appellant. So he cannot claim to be the legal heir of deceased-Darshan Singh on the basis of said Will.

17. This fact is not disputed that appellant-defendant was appointed as a nominee by deceased-Darshan Singh but it is settled principle of the law that the nomination cannot alter the course of succession as per the provisions of Hindu Succession Act. The nomination only indicates the hand which is authorised to receive the amount on payment of which the post office was to get a valid discharge of its liability but the legal heirs of deceased are entitled to claim the said amount in accordance with law of succession governing them. This fact is not disputed that plaintiff-respondent No.1 is the widow of deceased-Darshan Singh so she being his widow was his 1st class legal heir and was certainly entitled to the amount received by the appellant from the post office/defendant

No.2 on maturity of the Kisan Vikas Patras purchased by her deceased husband Darshan Singh.

Thus, I do not find any illegality in the concurrent findings of the learned Courts below holding plaintiff-respondent No.1 entitled for the recovery of Rs. 1 lac along with interest from the appellant.

18. Resultantly, the present appeal is without any merit and the same is hereby dismissed with costs.