

(2012) 03 DEL CK 0056

In the Delhi High Court

Case No : Regular First Appeal No. 200 of 2003

Shri Ved Prakash (Since Deceased) Through Legal Heirs APPELLANT
Vs

Shri Suraj Prakash (Since Deceased) Through Legal Heirs and RESPONDENT
Others

Date of Decision : 02-03-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96

Citation : (2012) 03 DEL CK 0056

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Rakesh Saini, for the Appellant;

Judgement

Valmiki J Mehta, J.—The challenge by means of this Regular First Appeal (RFA) filed u/s 96 of Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the trial Court dated 9.12.2002 by which the suit of the appellant/plaintiff seeking partition and possession was dismissed. The suit was filed for partition and possession of the properties which were in the name of late Sh. Hans Raj, father of the plaintiff and the defendant No. 1 alleging that the properties were HUF properties.

2. The facts of the case are that the appellant/plaintiff filed the subject suit for partition and possession with respect to four properties alleging them to be joint family properties. The aforesaid properties are as under:-

(i) Plot No. 9 (new)/plot No. 98 (old) measuring 300 sq. yards, on G.T. Road, Khasra No. 35, 36, 38 situated in the area of village Bharola, Abadi Adarsh Nagar, Delhi;

(ii) Plot No. 12 (new)/101 (old) measuring 300 sq. yards on G.T. Road, Khasra Nos. 35, 36, 38 situated in the area of village Bharola, Abadi Adarsh Nagar, Delhi;

(iii) Plot No. 60 measuring 150 sq. yards in Block ?C? on Rajan Babu Road, Khasra No. 262/258/217/4 situated in the area of village Bharola Abadi, Adarsh

Nagar Colony, on G.T. Road, Delhi;

(iv) House No.A-15 measuring 200 sq. yards situated in the area of Basai Darapur, Abadi Rajouri Garden, on Najafgarh Road, Delhi.

3. It was pleaded that father-late Sh. Hans Raj only had meagre income and the properties were purchased out of the ancestral funds besides the fact that appellant/plaintiff is also stated to have made contribution towards purchase of these properties. Reference is made in the plaint to a suit for injunction filed by the defendant Nos. 2 and 3 who are the children of defendant No. 1 seeking perpetual injunction, and in which suit the defendant Nos. 2 and 3 made averments of a registered Will dated 9.6.1972 executed by their grandfather-late Sh. Hans Raj, father of the plaintiff and defendant No. 1 bequeathing to them some of the suit properties. It was pleaded that the Will dated 9.6.1972 of late Sh. Hans Raj was unnatural and surrounded by highly suspicious circumstances and in any case late Sh. Hans Raj had no right to execute the Will as the properties were HUF properties.

4. The defendant Nos. 1 to 5/respondent Nos. 1 to 5 contested the suit and denied existence of any Hindu Undivided Family or that the properties belonged to the Hindu Undivided Family. It was pleaded that the properties belonged to late Sh. Hans Raj who had executed his Will dated 9.6.1972 giving shares in the properties to the defendant Nos. 2 to 6.

5. After completion of pleadings, the trial Court framed the following issues:-

1. Whether the suit has been properly valued for purposes of court fees and jurisdiction? If not, to what effect?

2. Whether the properties mentioned in para 1 of the plaint are the joint Hindu family properties? If so, what are the shares of the various parties?

3. Whether L. Hans Raj validly executed the Will dated 9th June, 1972? If so, to what effect?

4. Whether the plaintiff is entitled to rendition of accounts? If so, what directions are to be given to the local commissioner?

5. Relief.

6. The trial Court held that there was no Hindu Undivided Family between the parties and the properties did not belong to any Hindu Undivided Family inasmuch as except the bald assertion the appellant/plaintiff led no documentary evidence to prove either the existence of HUF, or use of ancestral funds in purchasing of the properties or of appellant/plaintiff having contributed to the purchase of the suit properties. The trial Court also held the Will of late Sh. Hans Raj dated 9.6.1972, Ex. DW5/1 as duly proved and consequently held that the appellant/plaintiff had no right, title and interest to the properties of late Sh. Hans Raj.

7. Before this Court, the counsel for the appellant/plaintiff though at the outset argued both the issues which were urged before the trial Court including of the properties being HUF properties and having been purchased out of the ancestral funds besides he having contributed moneys for the same, however, after initial arguments, pleas of existence of HUF or of the properties having been purchased out of ancestral funds or of the appellant/plaintiff having contributed moneys were given up. Thus the arguments were addressed on the basis that the properties were of late Sh. Hans Raj and that the Will, Ex. DW5/1 was not a legal and valid Will of late Sh. Hans Raj.

8. In order to appreciate the arguments urged on behalf of the appellant/plaintiff with respect to invalidity of the Will, it is necessary to refer to firstly the averments which were made in the plaint and in the replication with regard to the invalidity of the Will. These paras read as under:-

Para 2 of the plaint:-

2. On 5th August, 1974, defendant No. 2 and 3 filed a suit against the plaintiff for perpetual injunction restraining the plaintiff from interfering with the possession and enjoyment of properties mentioned in para No. 1 of the plaint. The said Defendants claimed that the properties mentioned in para 1 of the plaint were bequeathed to them by virtue of a Will dated 9th of June, 1972 allegedly executed by Shri Hans Raj. The said suit is pending in the court of Smt. Kanwal Inder, S.J.I.C. and the plaintiff is contesting the same. In the said suit, the plaintiff has denied the execution of the alleged Will. It was pleaded that the alleged will had not been executed by Shri Hans Raj of his own free will and that the said will was most unnatural and was surrounded by highly suspicious circumstances. It was further pleaded that even otherwise Sh. Hans Raj had no right to bequeath the said property by way of Will as he had no right to do so. The H.U.F. property could not bequeathed.

Para 2 of replication:-

2. Para No. 2 of the written statement is admitted in so far as it admits para No. 2 of the plaint, the rest of it is not admitted and para No. 2 of the plaint is reiterated in reply. It is not admitted that Shri Hans Raj executed any Will. It is also not admitted that the alleged Will is a legally valid or was executed by Shri Hans Raj without any pressure from the Defendants No. 1 and 4 or was executed by him with a free disposing mind. The alleged Will is surrounded by "suspicious circumstances.

(underlining added)

A reading of the aforesaid paragraphs shows that the pleading was that the Will executed by late Sh. Hans Raj was not valid inasmuch as it was executed by him on account of pressure without a free disposing mind. The plea of Will being surrounded by suspicious circumstances was also taken up.

9. The arguments urged on behalf of the appellant/plaintiff of the invalidity of the

Will have to be rejected because whatever be the pleadings, it is necessary that the pleadings have to be substantiated by means of evidence. Mere existence of pleading does not mean proof of the same. This I say so inasmuch as in the entire evidence which was led on behalf of the appellant/plaintiff, there is not even a single statement made of the Will of late Sh. Hans Raj having been executed by any pressure or on account of lack of sound disposing mind or that the Will was surrounded by unnatural circumstances. In my opinion, this aspect itself is sufficient to reject the arguments as urged on behalf of the appellant/plaintiff as to the invalidity of the Will, Ex. DW5/1.

In any case, the Will, Ex. DW5/1 has otherwise also been proved, in this case, by leading detailed evidence. Ordinarily, an existence of a Will is accepted on the testimony of one or both of the attesting witnesses. In the present case, on account of passage of time, both the attesting witnesses had expired, however, the execution of the Will and the registration of the Will was duly proved by the legal heirs of the attesting witnesses who identified the signatures of the attesting witnesses on the Will. Sh. Y.R. Kawatra, was the son of Sh. Mulakh Raj Kawatra, and who identified the signatures of his father, one of the attesting witnesses to the Will. The other witness was DW-6, Sh. Jagdish Chander, who was the son of other attesting witness, Sh. Mani Ram. This witness, DW-6, deposed with respect to going to the office of Sub-Registrar and execution of the Will by late Sh. Hans Raj by putting the thumb impression in his presence. This witness also deposed with respect to signatures on the Will, Ex. DW5/1 put in his presence by both the attesting witnesses. Nothing has been elicited in the cross-examination of any of the two witnesses to, at all, doubt the execution, validity or registration of the Will, Ex. DW5/1.

10. In fact, the respondents/defendants have led further evidence in addition to the depositions with regard to execution and registration of the Will, inasmuch as the Advocate who drafted the Will under the instructions of late Sh. Hans Raj i.e. one Sh. D.N. Nijhawan, Advocate was also examined and through his evidence as DW-3 it was proved that the Will was drafted under the instructions of late Sh. Hans Raj, and after the Will was typed, the same was read over and explained to late Sh. Hans Raj.

Not only the respondents/defendants called the aforesaid witnesses, they also summoned the doctor, one Dr. Mohan Rohatgi, who deposed with respect to his giving of the medical certificate, Ex. DW4/1 with respect to the fact that late Sh. Hans Raj was of sound disposing mind at the time of execution of the Will, and which certificate was given at the request of late Sh. Hans Raj. Dr. Mohan Rohatgi also deposed with respect to fact that he was the physician of late Sh. Hans Raj and late Sh. Hans Raj had asked for this certificate because late Sh. Hans Raj said that he wanted to execute a Will. Dr. Mohan Rohatgi deposed that late Sh. Hans Raj was being treated by him for an eye trouble and breathlessness.

11. The aforesaid facts show that not only the appellant/plaintiff failed to lead

any evidence whatsoever with respect to the Will not being validly executed inasmuch as it was allegedly executed on account of pressure or lack of sound disposing mind or allegedly surrounded by unnatural circumstances and thus miserably failed to discharge the onus of proof upon him, the respondents/defendants on the other hand led comprehensive evidence to prove the due execution and attestation of the Will by both the attesting witnesses, of the Advocate who drafted the Will, and finally the Doctor who gave the certificate with respect to sound disposing mind of late Sh. Hans Raj. There is absolutely no reason to disbelieve the testimonies of the independent/neutral witnesses of the respondents/defendants inasmuch as none of them had any personal interest in the respondents/defendants and hence were impartial witnesses. Ordinarily, and as stated above, a Will is taken as proved through the depositions of one or more of the attesting witnesses, however, in the present case there is comprehensive evidence with respect to drafting of the Will on the instructions of late Sh. Hans Raj, execution and attestation of the Will, registration of the Will, and finally of the sound disposing mind of late Sh. Hans Raj. In view of the existence of such overwhelming evidence, I hold that the trial Court was justified in holding the Will, Ex.DW5/1 to be validly proved.

12. A civil case is decided on balance of probabilities. The balance of probabilities in the present case shows that the Will, Ex. DW5/1 was executed by late Sh. Hans Raj bequeathing his properties to the respondent Nos. 2 to 6. The Will, in fact gives a reason not to bequeath any of the properties to two sons, namely, plaintiff and defendant No. 1 inasmuch as late Sh. Hans Raj was not happy with his two sons and therefore he gave the properties to his grandchildren and a part of one property to one of his daughters.

13. An appellate Court would not interfere with the findings of the trial Court with respect to one possible and plausible view taken by the trial Court unless the view taken by the trial Court is illegal or perverse. In view of the aforesaid, I do not find any illegality or perversity with the impugned judgment which calls for interference in appeal.

14. The appeal is accordingly dismissed, leaving the parties to bear their own costs. Trial Court record be sent back.