
(2007) 07 P&H CK 0061
In the Punjab And Haryana At Chandigarh

Smt. Geeta Chopra alias Sangita

APPELLANT

Vs

Madan Lal and Others

RESPONDENT

Date of Decision : 10-07-2007

Acts Referred:

Citation : (2007) 4 PLR 621 : (2007) 4 RCR(Civil) 88

Hon'ble Judges : S.D. Anand, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.D. Anand, J.—The plaintiff-petitioner's plea to adduce secondary evidence (for the proof of a registered sale deed dated 12.01.1987 executed by his deceased mother Satya Wati in his favour and also in favour of his brother) was declined by the learned Trial Judge vide order dated 26.02.2007. The evidence was sought to be adduced in rebuttal and to prove that Satya Wati was of sound and disposing mind at the time she executed the impugned Will.

2. The learned Trial Court took view that no case for adducing of secondary evidence had been made out and that there also was no case for adducing that evidence in rebuttal because this evidence was to have been adduced by the plaintiff-petitioner in affirmative.

3. I have heard Mr. B.R. Mahajan, learned Counsel for the petitioner and carefully gone through the file. None turned up on behalf of the respondents at the time of arguments before this Court, though respondent did put in appearance before this Court, through a counsel, on an earlier date.

4. An application filed by the petitioner for framing of additional issues had been earlier dismissed by the learned Trial Court vide order dated 10.02.2006. A Revision Petition (No. 1361 of 2006) filed by the petitioner was allowed by Hon'ble S.N. Aggarwal, J. vide order dated 03.04.2006 by framing the following issues on the pleadings of the parties:

1. Whether Satyawati was mentally deranged for about 40 years before her death? OPD

2. Whether Satyawati was missing since December, 1987? OPD

3. Whether Satyawati was murdered by the plaintiff in connivance with defendant Nos. 3 to 5? OPD

5. It is obvious that the plaintiff would be entitled to adduce evidence in rebuttal of the evidence which may have been adduced by the defendants-respondents under additional issue No. 1, as framed by Hon"ble S.N. Aggarwal, J. on 3.4.2006 in Civil Revision No. 1361 of 2006. It appears that the framing of this additional issues inadvertently escaped the notice of the learned Trial Court.

6. Insofar as the production of photostat copy of the impugned sale deed, by way of secondary evidence is concerned, there also the Trial Court view does not deserve affirmation. The plea raised by the petitioner at the Trial is that his mother had executed a valid Will in his favour. A notice for production of that document had already been issued by the petitioner to his respondent-brother. The original purports to be a registered document. In, the light thereof, there is no reason why the reception of secondary evidence (certified copy of the impugned sale deed) should be disallowed. The petitioner wants to prove thereby that his mother was of sound and disposing, mind or else she would not have been able to execute a registered sale deed. The plea on behalf of the respondent is to the contrary. The evidence aforementioned would enable the Court to completely and effectively dispose of the controversy at the trial.

7. The Revision Petition shall stand allowed accordingly. The orders dated 26.02.2007 and 5.4.2007 shall stand set aside. The petitioner shall be entitled to adduce evidence in rebuttal of the evidence which may have been adduced by the defendants-respondents in support of additional issue No. 1 as framed by Hon"ble S.N. Aggarwal, J. on 3.4.2006 in Civil Revision No. 1361 of 2006. The Trial Court shall also receive the certified copy of the impugned sale deed in secondary evidence. The Trial Court shall, however, be entitled to examine the aspect of admissibility/relevance thereof in its own judicial discretion.

8. Disposed of accordingly.