
(2012) 07 P&H CK 0221

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 4065 of 2010 (O and M)

State of Haryana

APPELLANT

Vs

Shanti Devi

RESPONDENT

Date of Decision : 10-07-2012

Acts Referred:

Evidence Act, 1872 — Section 68, 69, 70, 90
Succession Act, 1925 — Section 63, 63(C)

Citation : (2012) 168 PLR 457

Hon'ble Judges : Tejinder Singh Dhindsa, J

Bench : Single Bench

Advocate : Tanisha Peshawaria, DAG Haryana, for the Appellant; Sanjay Jain, for the Respondent

Final Decision : Allowed

Judgement

Tejinder Singh Dhindsa, J.—Smt. Shanti Devi widow of Mangat Ram filed a suit for declaration to the effect that she was owner in possession of house bearing No. 63/998 situated at Baldev Nagar, Ambala City and that the order dated 27.10.1999 passed by the Deputy Commissioner, Ambala exercising the power of Collector, Ambala ordering escheat of the house in question in favour of the State to be illegal, null and void. Challenge was also raised to the order dated 01.08.2000 passed by the Commissioner, Ambala in appeal preferred by the plaintiff holding the same to be not binding upon her rights in any manner. The consequential relief of permanent injunction restraining the defendants from interfering in her peaceful possession over the house in question was also prayed for. Briefly noticed, it was pleaded that the plaintiff alongwith her husband Mangat Ram had migrated from Pakistan in the year 1947 and had settled in Baldev Nagar, Ambala. Smt. Chanan Devi widow of Diwan Chand had also migrated from Pakistan and had been rehabilitated in the same locality in the house adjoining the house of the plaintiff. It was pleaded that Chanan Devi had been allotted house No. 63/998 in Baldev Nagar, Ambala City. Chanan Devi was stated to have died issueless. Plaintiff pleaded that her husband Mangat Ram

used to look after Chanan Devi and had rendered services to her during her life time. It was pleaded that Chanan Devi had executed a legal and valid Will dated 06.12.1959 in favour of Mangat Ram thereby bequeathing the house in question in his favour. Such Will was stated to have been scribed by Jagan Nath and two attesting witnesses were stated to be Gian Chan s/o Bakshi Gurditta Mal and Tej Ram s/o Kishan Chand. It was stated that Chanan Devi died on 10.12.1959 and upon her death on the basis of Will in question her husband Mangat Ram had become owner in possession of the house in question. It was further pleaded that Mangat Ram i.e. late husband of the plaintiff had suffered a decree dated 05.09.1986 in her favour with regard to the house in question in Civil Suit No. 298/1986 titled as Shanti Devi v. Mangat Ram and such decree was passed by the then Senior Sub Judge, Ambala. It was further pleaded that one Jagdish Chander Arora was residing in the house in question as tenant and on the basis of a false complaint having been lodged by such tenant against the plaintiff, an enquiry had been got conducted by the Deputy Commissioner and order dated 27.10.1999 had been passed by the Deputy Commissioner, Ambala exercising the power of Collector ordering the escheat of the house in question in favour of the State. The plaintiff preferred an appeal before the Commissioner but the same was dismissed vide order dated 01.08.2000.

2. The suit was contested by the defendants wherein, it was admitted that Smt. Chanan Devi had been allotted the house in question. Further, the Will dated 06.12.1959 alleged to have been executed by Chanan Devi in favour of Mangat Ram i.e. husband of the plaintiff was disputed. It was stated that the alleged Will dated 06.12.1959 was a forged and fictitious document. As such, it was contended on behalf of the defendant/State that the order dated 27.10.1999 passed by Collector as also the order dated 01.08.2000 passed in appeal were valid and legal orders and in term thereof, the house in question vested in the State.

3. Upon the pleadings of the parties, the following issues were struck by the Trial Court:

1. Whether the order dated 27.10.1999 passed by the defendant No. 2 in case titled as State of Haryana v. Shanti Devi and order dated 01.08.2000 passed by Commissioner, Ambala in Appeal No. 95 are illegal, inexecutable and not binding upon the rights of the plaintiff as alleged? OPP.

2. Whether the plaintiff is entitled to the relief of declaration and permanent injunction as prayed for by her? OPP

3. Whether the plaintiff has no locus standi and cause of action to file and maintain the present suit? OPP

4. Whether the civil court has no jurisdiction to entertain and try the present suit? OPP

5. Relief.

4. The Trial Court vide judgment and decree dated 24.08.2009 decreed the suit filed by the plaintiff declaring her to be the owner in possession of the house in question. The orders dated 27.10.1999 passed by the Collector, Ambala and dated 01.08.2000 passed by the Commissioner, Ambala were held to be null and void and the defendants were also restrained from interfering in the possession of the plaintiff of the house in question. The civil appeal preferred by the defendant/appellants had been dismissed by the Additional District Judge, Ambala vide judgment dated 31.05.2010 thereby affirming the judgment and decree of the Trial Court. Resultantly, the State of Haryana through Collector, Ambala as also Deputy Commissioner, Ambala defendant/appellants are in second appeal before this Court.

5. I have heard Ms. Tanisha Peshawaria, DAG Haryana counsel for the appellant and Mr. Sanjay Jain, Advocate for the respondent.

6. The following substantial questions of law arises for consideration in the present second appeal:

(i) As to whether the Will in question dated 06.12.1959 was voluntarily executed and as such was a genuine document?

(ii) As to whether the Will in question dated 06.12.1959 could be held as duly proved only on the basis of presumption having been drawn u/s 90 of the Indian Evidence Act, holding the Will to be more than 30 years old?

7. Respective counsel for the parties have advanced submissions with regard to the substantial questions of law formulated hereinabove.

8. Learned counsel appearing for the State would vehemently argue that the Will in question was surrounded with suspicious circumstances and the Courts below have erred in holding such Will to be genuine in terms of giving benefit of Section 90 of the Indian Evidence Act. Counsel would further submit that the Will in question had not been proved as per requirements of the statutory provisions of Sections 68 & 69 of the Evidence Act. Counsel would accordingly submit that since the Will in question was not duly proved in accordance with law, accordingly the order dated 27.10.1999 passed by the Deputy Commissioner, Ambala exercising the power of Collector, Ambala ordering escheat of the house in question in favour of the State was a valid order in the eyes of law.

9. On the other hand, Mr. Sanjay Jain, Advocate for the plaintiff/respondent would vehemently argue that since the Will in question dated 06.12.1959 was more than 30 years old, the presumption regarding genuineness of such Will in terms of Section 90 of the Indian Evidence Act, 1872 would have to be drawn. In support of such contention, learned counsel would place reliance upon a Single Bench judgment of Andhra Pradesh High Court in Kesrapu Manikyalu v. Veena Perumallayya and others 2000 (2) Civil Court Cases 247 as also Single Bench judgment of Kerala High Court in Acho Dominic v. Xavier 2000 (2) Civil Court Cases 659. Learned counsel appearing for the plaintiff/respondent would further

place reliance upon a judgment of this Court passed in Mangal Singh and others v. Kehar Singh and others 2007 (1) RCR (Civil) 157 to contend that once a deceased had executed a valid Will, there was no question of any succession of the house by way of escheat in favour of the State. Learned counsel appearing for the respondent would further contend that Chanan Devi, who had died on 10.12.1959, her last rights had been performed by Mangat Ram, husband of the plaintiff/respondent, who had also immersed her ashes in the holy waters of Ganga at Haridwar. The Kirya Ceremony was also performed by Mangat Ram. Counsel would contend that entries with regard to the immersion of ashes as also last rights had been made by the Purohit in the bahis and such entries were admissible in evidence and on the basis thereof a conclusion had been rightfully drawn that the Will in question dated 06.12.1959 had been duly executed by Chanan Devi in favour of late husband of the plaintiff/respondent namely Shanti Devi.

10. I have given my thoughtful consideration to the submissions advanced by respective counsels. Both the questions of law being inter-connected and inter-related, are being taken up for consideration together. The legal principles in regard to proof of a Will are no longer res integra. A Will has to be proved having regard to the provisions contained in Section 63 of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872 in terms, whereof a propounder of a Will must prove its execution by examining one or more attesting witnesses. As per the version of the plaintiff/respondent herself, the scribe as also the two attesting witnesses to the Will in question have since died. In such a situation, the Will was to be proved as per requirement of Section 69 of the Indian Evidence, wherein, it has been stipulated that if the attesting witnesses have died or not available then it must be proved that the attestation of one attesting witness at least is in his handwriting and that the signatures of the executant is in the handwriting of that person.

11. The Will in question dated 06.12.1959, in the facts of the present case has not been duly proved in terms of Section 68 and Section 69 of the Indian Evidence Act. Rather, the Trial Court has held the Will in question to be duly proved only on the basis that the same being more than 30 years old, the presumption in terms of Section 90 of the Evidence Act was available in favour of such Will and once such a presumption towards execution and attestation of such Will was drawn then the propounder would not require to prove that the testator had signed the same and there was no requirement for examination of the attesting witnesses.

12. The Hon''ble Supreme Court of India in the case of Bharpur Singh v. Shamsheer Singh 4 2009 (1) RCR (Civil) 826 observed in the following terms:

The provision of Section 90 of the Indian Evidence Act keeping in view the nature of proof required for providing a Will have no application. A Will must be proved in terms of the provisions of Section 63 (c) of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872. In the event the provisions

thereof cannot be complied with, the other provisions contained therein, namely, Section 69 & 70 of the Indian Evidence Act providing for exceptions in relation thereto would be attracted. Compliance with statutory requirements for providing an ordinary document is not sufficient, as Section 68 of the Indian Evidence Act postulates that execution must be proved by at least one of the attesting witness, if an attesting witness is alive and subject to the process of the Court and capable of giving evidence.

13. The Co-ordinate Bench of this Court in *Gurmail Singh v. Gurdev Singh* 2010 (4) RCR (Civil) 954 has followed the judgment of the Hon'ble Supreme Court in the case of *Bharpur Singh* (supra) and has held that the presumption u/s 90 of the Evidence Act is not applicable in the case of Will. It was held that the Will has to be proved in accordance with Section 68 or Section 69 of the Evidence Act. In the case of *Gurmail Singh* (supra), this Court has held as follows:

I have carefully considered the rival contentions. In view of judgment of Hon'ble Apex Court in the case of *Bharpur Singh* (supra) and judgment of this Court in the case of *Kapil Dev* (supra), it has to be held that presumption u/s 90 of the Evidence Act is not applicable in the case of Will which has to be proved in accordance with Section 68 or Section 69 of the Evidence Act. In view of these judgments cited by learned counsel for the appellants as noticed hereinabove cannot be followed. In the instant case appellants have not led any evidence in compliance with provision of Section 68 or Section 69 of the Evidence Act. Consequently, the Will set up by the appellants is not proved at all.

14. In the light of such settled position of law, it would be clear that the Courts below have clearly erred in holding the Will in question dated 06.12.1959, to be a valid and genuine document. A presumption being drawn u/s 90 of the Evidence Act for the reasons that the Will in question was more than 30 years old, can not be made the sole basis for holding the Will to be a valid document and thereby disbursing with the requirement of Section 63 of the Succession Act as also Sections 68 and 69 of the Evidence Act. Still further, Section 90 of the Evidence Act is a general provision and the same can not be construed to override the specific provisions of Section 68 and Section 69 of the Indian Evidence Act.

15. Even otherwise, the Courts below have erred in not dealing with the suspicious circumstances that surrounded the alleged execution of the Will in question. Such suspicious circumstances may be noticed: firstly, there was no relationship between Chanan Devi and Mangat Ram i.e. the late husband of the plaintiff/respondent: Secondly, the alleged Will was allegedly executed on 06.12.1959 i.e. only four days prior to the death of Chanan Devi, who admittedly died on 10.12.1959: Thirdly, the Will was an un-registered document and lastly, Mangat Ram had suffered a collusive decree in favour of his wife i.e. the present plaintiff/respondent on the basis of such Will.

16. Learned counsel appearing for the plaintiff/respondent has also strenuously

argued that the decree dated 05.09.1986 passed in civil suit no. 298 of 1986 suffered by her husband Mangat Ram in her favour with regard to the house in question has been passed by Competent Court of jurisdiction and the same has not been set aside till date. Suffice it to observe that such submission is devoid of any merit. No benefit can be derived by the plaintiff/respondent on the basis of an alleged Will, which has not been proved to be duly executed in accordance with law. The civil Court decree can not held to be binding upon the State as it was procured by the plaintiff/respondent in collusion with her husband Mangat Ram.

17. Once the Will in question is held to be not duly proved, then the general rule is clear that in the eventuality of the deceased dying without heirs, the estate would escheat to the Government. The Courts below have held the impugned orders dated 27.10.1999 passed by the Deputy Commissioner, Ambala exercising the power of Collector, Ambala ordering escheat of the house in question in favour of the State as also the order dated 01.08.2000 dismissing the appeal passed by the Commissioner, Ambala to be null and void only on the basis of the Will in question dated 06.12.1959 terming the same to be valid. Even such finding can not be sustained in view of the fact that the alleged Will dated 06.12.1959 itself is being held to be not duly proved on account of non-compliance of the statutory provisions of section 63 of the Succession Act and Sections 68 & 69 of the Indian Evidence Act.

18. For the reasons stated hereinabove, both the questions of law are answered in favour of the State and against the plaintiff/respondent. Resultantly, the present second appeal is allowed. The impugned judgment and decree dated 24.08.2009 passed by the Trial Court as also impugned judgment and decree dated 31.05.2010 passed by the Additional District Judge, Ambala are set aside. The orders dated 27.10.1999 passed by the Deputy Commissioner, Ambala ordering the escheat of the house in question in favour of the State as also the order dated 01.08.2000 passed by the Commissioner, Ambala dismissing the appeal preferred by the plaintiff/respondent are held to be legally valid and the suit filed by the plaintiff/respondent stands dismissed. The appeal accordingly, is allowed.