
(2010) 02 P&H CK 0222
In the Punjab And Haryana At Chandigarh

Vijay Kapoor

APPELLANT

Vs

Smt. Kanta Kapoor and Others

RESPONDENT

Date of Decision : 16-02-2010

Acts Referred:

Constitution of India, 1950 — Article 227
Evidence Act, 1872 — Section 65

Citation : (2010) 02 P&H CK 0222

Hon'ble Judges : L.N. Mittal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

L.N. Mittal, J.—Defendant No. 1 Vijay Kapoor has filed the instant revision petition under Article 227 of the Constitution of India challenging order dated 12.3.2008 passed by learned Civil Judge (Senior Division), Panchkula, Annexure P/9 thereby dismissing application of petitioner for permission to lead secondary evidence of alleged Will dated 15.8.1984 executed by petitioner's father Prithvi Raj Kapoor since deceased.

2. This is unfortunate litigation among the family members of late Prithvi Raj Kapoor. Suit has been filed by respondent Nos. 1 to 3. Respondent No. 1 is wife of Prithvi Raj Kapoor whereas respondent Nos. 2 and 3 and also the petitioner-defendant No. 1 are his sons. Defendant Nos. 2 and 3/respondent Nos. 4 and 5 are daughters of Prithvi Raj Kapoor.

3. Defendant No. 1 has claimed that Prithvi Raj Kapoor executed Will dated 15.8.1984 in his favour regarding disputed house.

4. Defendant No. 1 petitioner moved application u/s 65 of the Indian Evidence Act for permission to lead secondary evidence of the alleged Will dated 15.8.1984 contending that the Will is in possession and custody of plaintiff-respondent No. 1. The said application has been dismissed by the trial court by way of impugned order.

5. I have heard learned Counsel for the parties and perused the case file.

6. Learned Counsel for the petitioner vehemently contended that the trial court has dismissed petitioner's application for secondary evidence on the ground that existence of the original is not proved but it could not be done. It was contended that the petitioner should be permitted to lead secondary evidence to prove the existence of the Will as well as to prove contents thereof by secondary evidence. The petitioner claims to be in possession of a photostat copy of Will. How the petitioner came in possession of the said photostat copy is explained by him by alleging that during the life time of his late father Prithvi Raj Kapoor, loan was to be raised by the petitioner (then a government officer) for repair/maintenance of the house in dispute and when the petitioner applied for taking loan from the Government, the dealing official verbally asked the petitioner if his father had executed some Will regarding the house and if so copy of the Will be produced and thereupon the petitioner obtained copy of the Will from his father but the Will could not be submitted to the Government as meanwhile petitioner's father himself had raised necessary funds for repair of the house. Learned Counsel for the petitioner in support of his contention has relied on a judgment of Hon'ble Supreme Court in the case of Nawab Singh v. Inderjit Kaur 1999(2) RCR (Civil) 678 and also three judgments of this Court in the cases of Meena Sharma v. Rama Sharma and Ors. 2008(2) CCC 405 (P&H); Mohit Batra v. Shalu 2006(4) RCR (Civil) 452 and Jeet alias Ajeet Mehta v. Ms. Meena alias Sukhwinder Singh 2006(4) RCR (Civil) 642.

7. On the other hand, learned Counsel for the respondents contended that the very existence of the original Will is not established and therefore, the petitioner cannot be permitted to lead secondary evidence thereof. It was contended that during the life time of petitioner's father, there was no occasion for demand of copy of the Will for enabling the petitioner to raise loan from the Government and therefore, the petitioner could not have been in possession of the copy of the alleged Will. It was contended that if existence of the original document is not proved, secondary evidence thereof cannot be permitted. Reliance in support of this contention has been placed on a judgment of Hon'ble Apex Court in J. Jashoda v. Smt. Shobha Rani 2007(3) CCC 195 (S.C) and four judgments of this Court in the cases of Ved Parkash v. Smt. Kartar Kaur 1993(2) RCR (Rent) 680; Surjeet Kaur v. Malkeet Kaur 1998(3) RCR (Civil) 227; Mangat Ram v. Prabhu Dayal and Ors. 2002(4) RCR (Civil) 706 and Kartar Kaur v. General Public and Ors. 2003(3) RCR (Civil) 509. I have carefully considered the rival contentions and perused the judgments cited at the bar. It is correct that judgments cited by learned Counsel for the petitioner do support his contention to some extent. However, at the same time, judgments cited by learned Counsel for the respondents as noticed hereinabove, dis-entitle the petitioner to lead secondary evidence of the Will because the existence of the original document itself is not proved. The weight of the precedent lies against the petitioner in view of the judgments cited by learned Counsel for the respondents.

8. In the aforesaid context, it has to be noticed with significance that the petitioner while appearing in the witness box stated that Will in question was not typed in his presence and even its copy was not prepared in his presence. This statement of the petitioner himself does not prove the existence of the original Will. The version pleaded by the petitioner as to how he came in possession of the photostat copy of the alleged Will is also completely un-natural and unreliable. While petitioner's father (the testator) was still alive, the question of the Government asking the petitioner about Will if any executed by his father during his life time would not have arisen when the petitioner allegedly wanted to raise loan for repair of the disputed house. This version of the petitioner is completely imaginary.

9. In view of the aforesaid, the trial court was justified in declining permission to the petitioner to lead secondary evidence of the alleged Will, when even existence thereof is prima facie not established. do not find any illegality in the impugned order dated 12.3.2008, Annexure P/9, passed by the trial court. The revision petition is devoid of merit and is accordingly dismissed.