

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 573 of 2005

Date of decision 21.6.2006.

Bimla and another

...Appellants.

Versus

Nimblu and others

...Respondents.

Coram

The Hon'ble Mr. Justice : **Surjit Singh, Judge.**

Whether approved for reporting?¹

For the appellant: Mr. Sanjeev Kuthiala, Advocate.

For respondent s: Mr. Sunil Mohan Goel, Advocate.

Surjit Singh, Judge (Oral)

Heard and gone through the record.

There was a man by the name of Atma Ram. It appears that he married a lady named Bristu. It further appears that from that lady, he had begotten a daughter named Ram Kali. This Ram Kali was the mother of appellants – plaintiffs Bimla and Khuri. Bristu, the wife of Atma Ram died sometime in the year 1958. Said Atma Ram had another wife named

Whether the reporters of the local papers may be allowed to see the judgment? Yes

Nimblu, who is respondent No. 1 herein. On the death of Atma Ram which took place in the year 2000, his estate was mutated in the name of all the four respondents on the basis of a Will purported to have been executed in their favour by Atma Ram. The present plaintiffs, who claimed to be the daughters of Ram Kali, a pre deceased daughter of said Atma Ram, then filed a suit seeking declaration that Atma Ram had died intestate and that they being the daughters of a pre-deceased daughter of Atma Ram, and as such Class I heirs, along with the respondents, had the right to inherit the estate of Atma Ram. They also sought a declaration that the Will set up by the respondents – defendants was not a valid one and that it was the result of fraud and mis-representation or in any case its execution was shrouded by suspicious circumstances. It was also alleged that as a matter of fact, respondents 3 and 4, namely Mohantu and Dev Kali, who were recorded as daughters of respondent No. 1 Nimblu in the Will, were though the daughters of late Atma Ram, they were not born from the womb of respondent No. 1 Nimblu, but from the womb of his first wife Bristu.

It was alleged that the mention in the Will that these two respondents, namely Mohantu and Dev Kali, were the daughters from the womb of Nimblu itself was a suspicious circumstance.

Respondents – defendants contested the claim. They denied that Ram Kali, the mother of the appellants – plaintiffs, was the daughter of Atma Ram from the womb of Bristu. They pleaded that as a matter of fact Bristu had no issue. They alleged that respondents 2, 3 and 4 were the daughters of Atma Ram from the womb of respondent No. 1 and Atma Ram had made a Will in favour of all the respondents in the year 1986 and on the

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basis of that Will, mutation of the estate of Atma Ram had also been attested in their favour.

Parties went to trial. At the end of the trial, it was held that Atma Ram had made a Will in favour of the respondents – defendants and the Will was valid and genuine. Consequently, the suit was dismissed. Appeal filed by the plaintiffs – appellants in the Court of the District Judge also stands dismissed.

Learned counsel representing the appellants – plaintiffs has submitted that the fact that two of the respondents are recorded as daughters of respondent No. 1 Nimblu, whereas in fact were the daughters of Bristu, the first wife of Atma Ram, itself is a very strong suspicious circumstance indicating that the Will is not genuine. It has further been submitted by the learned counsel that the two Courts below have returned the finding that Ram Kali, the mother of the plaintiffs, was not the daughter of Bristu from the loins of Atma Ram and that this finding was unwarranted, because the suit did not pertain to the declaration of paternity of said Ram Kali.

As regards the first submission, the fact whether respondents 3 and 4 are the daughters of Atma Ram from the womb of Bristu or from the womb of Nimblu, respondent No. 1, cannot be said to create any doubt about the genuineness of the Will. It is not in dispute that respondents 3 and 4 are the daughters of Atma Ram, the testator. Even if these two respondents be assumed to be the daughters of Atma Ram from the womb of Bristu and not from the womb of Nimblu, that would not make the disposition unnatural. Rather, it would suggest that the disposition is both natural and equitable, because even the daughters from the womb of the

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earlier wife have been given equal shares along with their step mother and step sister under the Will. So this cannot be interpreted to be a suspicious circumstance causing doubt about the genuineness of the Will. In any case, there is no evidence on record suggesting that respondents 3 and 4 were born from the womb of Bristu and not respondent No. 1. The entire submission on this point is based on conjectures and surmises. It is stated by the learned counsel that Bristu was the first wife. She died in the year 1958 and Atma Ram supposedly married respondent No. 1 after the death of Bristu, but respondents 3 and 4 were born in the decade of 1940s. It is a matter of common knowledge that in remote areas of this hilly state, even after the enactment of Hindu Marriage Act, some people keep more than one wife at a time. May be that Nimblu, respondent No. 1, was brought as his wife by Atma Ram even during the life time of Bristu.

As regards the second submission that the two Courts below were not justified in returning the findings that Ram Kali was not the daughter of Atma Ram because no such issue was directly involved, learned counsel for the respondents says that respondents have no objection to the expunction of the finding / observations by the two Courts below that Ram Kali was not the daughter of Atma Ram. Therefore, the finding/ observations of the two Courts below on this point are ordered to be expunged from the judgments of the trial Court as also the first appellate Court.

From the above discussion, it is manifest that no substantial

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question of law arises. Hence the appeal is dismissed.

CMP 995 and 996 of 2005.

Dismissed having become infructuous.

June 21, 2006(PC).

**(Surjit Singh),
Judge.**