

**IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA**

**RSA No. 141 of 1995.**

**Judgement reserved on 26<sup>th</sup> June, 2007.**

**Date of Decision: 29<sup>th</sup> June, 2007.**

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Satish Kumar and others

.. Appellants.

Versus

Narinder Kumar and others

.. Respondents.

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**Coram**

**The Hon'ble Mr. Justice Dev Darshan Sud, Judge.**

Whether approved for reporting?<sup>1</sup>

**For the appellants:** Mr. G.C. Gupta, Senior Advocate with Mr. Mohinder Gautam, Advocate.

**For respondent No.1:** Pt. Om Parkash, Advocate.

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**Dev Darhshan Sud, J .**

This is the plaintiffs' second appeal against the judgment and decree of the learned Additional District Judge (2), Kangra at Dharamshala, who affirmed the judgment and decree of the learned trial Court dated 27<sup>th</sup> July, 1991, passed in Civil Suit No. 123 of 1989, dismissing the suit of the plaintiffs.

The plaintiffs instituted a suit for declaration to the effect that they were the owners of the property in terms of the Will Ext. PW-3/A executed by the deceased Chuni Lal in their favour and any subsequent Will which may be set up, are not in consonance with the provisions of Indian Succession Act. According to the plaintiffs, the Will dated 19<sup>th</sup>

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<sup>1</sup> Whether the reporters of Local Papers may be allowed to see the judgment?

August, 1971 Ext.PW-3/A was the only valid Will executed by the testator as at that time he was in sound disposing mind and all subsequent purported Wills executed by him were not binding on his estate.

The trial Court framed seven issues. Strangely, the onus to prove that the Will set up by the defendants Ext.D.1, dated 22<sup>nd</sup>/23<sup>rd</sup> February, 1986 has been put on the plaintiffs, which is against the settled principle of law that it is for the propounder to establish the validity of his Will and not on the opposite side. Be that as it may. Nothing is being said in this appeal since no judgment is being passed on merits.

The learned trial Court found that the Will Ext.PW-2/A was executed in 1971. Thereafter, four Wills Exts. DW-2/A, DW-2/B, DW-2/C and D-1 were executed. Ext. D-1 executed in favour of the defendants was held valid by the trial Court. The trial Court has noticed the evidence on record and law cited without specific reference to the context and without in any manner applying its mind as to which Will was to be accepted as being the latest Will and testament of the testator dismissed the suit. In appeal which was filed before the learned Additional District Judge, again, no attempt has been made to come to a definite conclusion as to the legality of the Will Ext.PW-2/A set up by the plaintiffs. The learned Additional District Judge, has noticed that there are four Wills which according to him clearly shows that the deceased had executed the same according to his convenience. What were the circumstances inducing the testator to execute these Wills in tandem or question regarding the validity of the Wills, has not been gone into by the appellate Court. Appeal is a valuable right and the first appellate court is the final authority of fact and is required to arrive at clear and cogent findings on facts.

The Hon'ble Supreme Court in **Lakshmi Ram Bhuyan v. Hari Prasad Bhuyan and others**, (2003)1 SCC 197, has held that Order XX and XLI Rule 31 of the Code of Civil Procedure mandates that the judgment should be clear, unambiguous and deal with all the points involved. It has been held in paras 10 and 11 as under:-

“10. Certain provisions of the Code of Civil Procedure, 1908 may be noted. Order VII Rule 1 CPC requires the plaintiff to give sufficient particulars of the relief, which the plaintiff claims. Order XX requires a judgment to contain all the issues and findings or decision thereon with the reasons therefore. The judgment has to state the relief allowed to a party. The preparation of decree follows the judgment. The decree shall agree with the judgment. The decree shall contain, *inter alia*, particulars of the claim and shall specify clearly the relief granted or other determination of the suit. The decree shall also state the amount of costs incurred in the suit and by whom or out of what property and in what proportions such costs are to be paid. Rules 9 to 19 of Order XX are illustrative of contents of decrees in certain specified categories of suits. The very obligation cast by the Code that the decree shall agree with the judgment spells out an obligation on the part of the author of the judgment to clearly indicate the relief or reliefs to which a party, in his opinion, has been found entitled to enable decree being framed in such a manner that it agrees with the judgment and specifies clearly the relief granted or other determination of the suit. The operative part of the judgment should be so clear and precise that in the event of an objection being laid, it should not be difficult to find out by a bare reading of the judgment and decree whether the latter agrees with the former and is in conformity therewith. A self-contained decree drawn up in conformity with the

judgment would exclude objections and complexities arising at the stage of execution.

11. The obligation is cast not only on the trial court but also on the appellate court. In the event of the suit having been decreed by the trial court if the appellate court interferes with the judgment of the trial court, the judgment of the appellate court should precisely and specifically set out the reliefs granted and the modifications, if any, made in the original decree explicitly and with particularity and precision. Order XLI Rule 31 CPC casts an obligation on the author of the appellate judgment to state the points for determination, the decision thereof, the reasons for the decision and when the decree appealed from is reversed or varied, the relief to which the appellant is entitled. If the suit was dismissed by the trial court and in appeal the decree of dismissal is reversed, the operative part of the judgment should be so precise and clear as it would have been if the suit was decreed by the trial court...”

The first appellate Court is duty bound to discuss all the contentions raised by the parties. It is bound to undertake detailed examination and critical appraisal of facts before it and cannot mechanically reaffirm the findings of the trial Court. Reference is being made to **United India Insurance Co. Ltd. v. Kanwal Nain Sachdeva and others,** (1999) 9 SCC 193, wherein it has been held by the Supreme Court in para 3 as under:

“The High Court dismissed the appeal by a cryptic order stating that no case had been made out for interfering in the well-reasoned award of the Motor Accident Claims Tribunal. In our opinion, the High Court ought to have discussed the merits of the contentions raised by the Insurance Company especially when it

was dealing with the first appeal against the order of the Tribunal.”

This law has been subsequently reaffirmed and reiterated by the Supreme Court in **State of Rajasthan v. Harphool Singh (Dead) through his LRS**, (2000) 5 SCC 652. Their Lordships in paragraph 5 has held as under:

“5. Aggrieved, the State pursued the matter in appeal before the first appellate court but we find on a close scrutiny of the judgment that there was no due or proper application of mind or any critical analysis or objective consideration of the matter made, despite the same being the first appellate court. On the other hand, by merely reproducing the findings of the nature adverted to by us, a mechanical affirmation seems to have been made of them without any reference to the principles of law or the criteria to be satisfied before the claim of the plaintiff of perfection of title by adverse possession could be sustained, involving correspondingly destruction of title of the State in respect of a public property....”

To the similar effect is the decision of the Supreme Court in **Madhukar and others v. Sangram and others**, (2001) 4 SCC 756, **Narbada Devi Gupta v. Birendra Kumar Jaiswal and another**, (2003) 8 SCC 745, **A. Ambikamba Dead by LRs. and another v. B. Ranagaswamy Dead by LRS**, (2005) 9 SCC 374, **H.K.N. Swami v. Irshad Basith (Dead) by LRs**, (2005) 10 SCC 243 and **Sanjay Singh Rawat and others v. National Small Industries Corpn. Ltd. and others** (2005) 12 SCC 146.

Precedents on this point need not be multiplied as the law is clear and well settled that first appeal is a valuable right and the

evidence has to be analysed clearly and precisely and precedents applied judicially.

I find from the judgment of the appellate Court that no such attempt has been made. Even the trial Court has gone awry by just mentioning the evidence and the law and making no attempt on critical appraisal of the facts and law before it. In the circumstances, the case is remanded to the learned Additional District Judge (2), Kangra for decision afresh in accordance with law. He will keep in mind the directions of the Supreme Court that all the issues, facts and law should be dealt with. The parties are directed to appear before the Addl. District Judge (2), Kangra at Dharamshala on 28<sup>th</sup> July, 2007, who will dispose of the matter expeditiously.

June 29<sup>th</sup>, 2007  
(rc)

**(Dev Darshan Sud),  
Judge.**