

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

R.S.A. No. 153 of 2005

Date of decision: 30.10.2015

Rita Devi and others

...Appellants/Defendants.

Versus

Kameshwari Devi

...Respondent/Plaintiff.

Coram

The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

Whether approved for reporting ?¹ No

For the Appellants : Mr. G.R.Palsra, Advocate.

For the Respondent : Mr. Vikas Rathore, Advocate.

Tarlok Singh Chauhan, Judge (Oral)

The present appeal has been preferred by the appellants/Defendants against judgment and decree dated 1.1.2005 passed in Civil Appeal No. 44/99, 155/2004 by learned Presiding Officer, Fast Track Court, Mandi, H.P. whereby he affirmed the judgment and decree dated 28.4.1999 passed by learned Sub Judge 1st Class, Court No.3, Mandi, District Mandi, H.P. in Civil Suit No. 76/92 – 311/98/92 and dismissed the appeal.

2. The facts, in brief, are that respondent/plaintiff is the mother of the deceased Chint Ram and claimed that she is legally entitled to inherit his property. The deceased Chint Ram has got his property in District Hamirpur and in Mandi and the plaintiff being mother, defendant No.1 being widow and defendants No. 2 and 3 being daughters are

¹ Whether reporters of Local Papers may be allowed to see the Judgment ? yes

entitled to jointly inherit the property of the deceased Chint Ram. The deceased Chint Ram alleged to have self immolated himself by sprinkling kerosene on him on 17.12.1991 and he was removed to Civil Hospital, Mandi in unconscious condition where he remained admitted till 19.12.1991 in a semi-unconscious state of mind. The hospital authorities told that there were hardly any chances of his survival and as such the deceased was discharged from the Civil Hospital. On the request of the parties and other relations he was thereafter removed to PGI, Chandigarh and got admitted there but the deceased Chint Ram could not survive and ultimately died on 23.12.1991. The deceased never expressed his intention to make any sort of Will during the aforesaid period as he was not in his senses to make any such sort of Will. The defendants/appellants some how have created some false, fictitious and forged Will which is purported to have been executed by the deceased Chint Ram in favour of the defendants on 19.12.1991, which the plaintiff came to know when she received summons from the Assistant Consolidation Officer, Hamirpur about the attestation of mutation regarding the property of the deceased Chint Ram. The said Will was never executed by Chint Ram nor he was in a sound state of mind to execute such Will, and, therefore, the mutation attested in favour of the defendants qua the property of the deceased Chint Ram is illegal, null and void. On the basis of this, the plaintiff filed a suit in the Court below seeking declaration that the impugned Will is a forged document and the same is illegal, null and void and the mutation attested in the name of the defendants on the basis of the said Will is also null and void and prayed for consequential relief

restraining the defendants from disposing of the property of the deceased Chint Ram and also seeking decree of joint possession.

3. The suit filed by the plaintiff/respondent was contested by the defendants/appellants. It was averred that the plaintiff is the mother of Chint Ram who died on account of stove fire. It was admitted that Chint Ram was having property in Mandi and Hamirpur, Districts but stated that the plaintiff is not entitled to inherit the said property of Chint Ram. It was admitted that Chint Ram was admitted in the hospital at Mandi on 17.12.1991 from where he was discharged on 19.12.1991, but stated that he was taken to his house where he executed the Will in a sound state of mind and thereafter he was taken to PGI, Chandigarh where he died. It was denied that Chint Ram was not in his senses on 19.12.1991. It was also denied that the Will is forged document, but stated that the said Will is genuine document which was executed by the deceased Chint Ram of his own free Will. It was further averred that the plaintiff raised objection at the time of mutation but the said objection was rejected. It was also averred that now the defendants are exclusive owners in possession of the property of Chint Ram after his death on the basis of the Will.

4. The plaintiff filed replication to the written statement of the defendants and re-affirmed all the allegations contained in the plaint and denied those of the written statement.

5. On the pleadings of the parties, the learned trial Court framed the following issues:

1. Whether late Sh. Chint Ram has executed a valid Will in favour of the defendants? OPD
2. Whether the alleged Will dated 19.12.91 is false, fictitious and forged, as alleged? OPP

3. Whether the plaintiff is entitled for the relief of injunction?
OPP
4. Whether the plaintiff is entitled for the relief of possession as prayed for? OPP
5. Relief.

6. After recording the evidence, the learned trial Court decreed the suit of the plaintiff vide judgment and decree dated 28.4.1999. Aggrieved against the said judgment and decree, the defendants preferred an appeal before the learned lower Appellate Court, who vide his judgment and decree dated 1.1.2005 has been pleased to affirm the judgment and decree of the learned trial Court and dismiss the appeal of the defendants. It is against this judgment and decree, which has been challenged by the appellants/defendants before this Court.

7. On 12.1.2006, this Court admitted the appeal on the following substantial questions of law:

1. *Whether the appellants have proved the execution of the Will dated 19.12.1991 by examining one of the attesting witness as subscriber of the Will and the findings of both the lower Courts are contrary to provision of Section 63 of the Indian Succession Act?*
2. *Whether the appellants have removed all the suspicious circumstances of the Will in question and findings of both the lower Courts are perverse which has materially prejudiced the case of the appellants?*
3. *Whether dis-inheriting some of the legal heirs by the executant and the relation of the executant are cordial with the dis-inherited legal heirs are not the suspicious circumstances?*

8. Since all the substantial questions of law are somewhat inter-related and inter-connected and the same are being considered together by common reasoning.

9. It is not in dispute that the plaintiff is the mother, whereas defendant No.1 is the widow and the defendants No. 2 and 3 are the daughters of deceased Chint Ram. There is further no dispute that Chint Ram suffered burn injuries of fire on 17.12.1991 and was admitted in Civil Hospital at Mandi. On 19.12.1991, he was discharged from Mandi Hospital and thereafter taken to PGI, Chandigarh where he ultimately died on 23.12.1991. The plea of the defendants is that Chint Ram after being discharged from Civil Hospital, Mandi was taken to his house prior to his removal to PGI, Chandigarh where he executed the impugned Will bequeathing his property in favour of the defendants. On the other hand, the plea of the plaintiff is that Chint Ram was not in a sound state of mind from 17.12.1991 till his death and was therefore, not in a position to execute any Will.

10. The defendants have examined three witnesses including the defendant No.1 Rita Devi, who appeared as DW-3 and stated that Chint Ram on 16.12.1991 had sustained burn injuries due to stove fire and was admitted in the Civil Hospital at Mandi from where he was discharged on 19.12.1991 and was referred to PGI, Chandigarh and was thereafter taken to his house where he executed a Will which was written by Pritam Singh in the presence of the witnesses and Chint Ram had signed the Will after fully understanding its contents in presence of the witnesses, who in turn, signed the Will in the presence of the testator and thereafter Chint Ram was removed to PGI, Chandigarh where he breathed his last on 23.12.1991.

11. During the cross-examination, the defendant No.1 admitted that Chint Ram was admitted in Civil Hospital by the plaintiff, who is the

mother of Chint Ram and Ghanshyam, who is the brother of Chint Ram. It is also admitted by her that Chint Ram was taken to PGI, Chandigarh from his house by Ghanshyam and Bansi etc. at about 7.00 p.m. on 19.12.1991. She further stated that Pritam Singh the scribe of the Will was an inhabitant of Hamirpur, but had come to Rewalsar on 19.12.1991 alongwith her father and further states that all the witnesses to the Will had come to the house of Chint Ram in order to see him. She denied that Chint Ram was not in his senses on 19.12.1991 when the Will was executed by him.

12. DW-4 Pritam Singh, who is the scribe of the Will and DW-5 Basant Ram, who is a witness to the Will, have stated that Chint Ram was in his senses at the time of execution of the Will. DW-5 being the father of defendant No.1 can safely be held to be an interested witness and since DW-4 also had also accompanied DW-5 at the relevant date from Hamirpur, it can further safely be held that even this witness is interested in the success of the plea raised by defendant No.1, who too, originally belongs to Hamirpur. The other witnesses to the execution of the Will have not been examined by the defendants but have rather been examined by the plaintiff.

13. Dhan Dev PW-1, Tek Chand PW-2 and Tulsi Ram PW-4 are the alleged attesting witnesses to the execution of the Will and have stated that the impugned Will was not executed by deceased Chint Ram in their presence and that they had signed the Will subsequently. These witnesses have further deposed that deceased Chint Ram had suffered burn injuries and was not in a position to speak and, therefore, never executed any Will as alleged.

14. The plaintiff, too, appeared as PW-3 and stated that Chint Ram had suffered severe burn injuries and was initially taken to the hospital at Mandi, but then referred to PGI, Chandigarh where he subsequently died. She has specifically stated that hand and other body parts of Chint Ram were severely burnt and he was not in a sound state of mind due to the burn injuries so sustained by him. PW-5, who is an inhabitant of the same locality, has corroborated the statement of the plaintiff.

15. It has concurrently been found by the learned courts below that on account of the burn injuries sustained by Chint Ram; his condition was such he could not have executed a Will. Such findings are based upon the correct appreciation of the pleadings as also the oral evidence led by the parties and do not suffer from any illegality and impropriety much less perversity. The learned Courts below have not discarded the claim set up by the appellants only on the ground that it only chose to examine one attesting witness, but rejected the claim on the ground that the defendants had failed to prove on record the due execution of the Will as set up by them. The Will is shrouded with suspicious circumstances which have not been dispelled by the appellants/ defendants.

16. No doubt, the mere exclusion of one of the legal heirs is not a suspicious circumstance, but then the defendants were required to prove that a legal and valid Will has been executed by the deceased in their favour. The appellants have miserably failed to prove the same.

All the substantial questions of law are answered accordingly.

17. Resultantly, there is no merit in this appeal and the same is dismissed, leaving the parties to bear their own costs.

October 30, 2015
(GR)

(Tarlok Singh Chauhan)
Judge