

Sucha Ram (since deceased) through Lrs v. Lachhman Dass, 2020 PLRonline 5205

The testimony of attesting witnesses is silent with regard to the drafting and execution of a will by the CR. The will in question has not been proved in accordance with the provisions in law.

Every co-sharer is treated to be in possession of every inch of joint land. The respondents-plaintiffs would be entitled to joint possession of the suit land being co-owners to the extent of share determined by the court

The contention that a suit for declaration simpliciter without seeking relief of possession is not maintainable is patently misconceived and liable to be rejected.

2020 PLRonline 5205

Punjab and Haryana High Court

Rekha Mittal J.

Sucha Ram (since deceased) through Lrs v. Lachhman Dass and others

RSA-3110 of 2010 (O&M)

14.1.2020

Indian Succession Act S. 63(c) - Will - Testimony of attesting witnesses is silent with regard to drafting, execution of Will by CR - He has only deposed about signatures of himself, other attesting witness and CR before the Sub Registrar - Will in question has not been proved in accordance with the provisions in law.

Co- owners - Declaration with regard to their being co- owners of suit land to the extent of a particular share on the basis of natural succession - Every co-sharer is treated to be in possession of every inch of joint land - As such, the respondents-plaintiffs would be entitle to joint possession of suit land being co-owners to the extent of share determined by the court - Since the respondents-plaintiffs could not seek possession nor partition of agriculture land before the civil court, contention that suit for declaration simpliciter without seeking relief of possession is not maintainable, is patently misconceived and liable to be rejected.

Limitation - In the given circumstances, cause of action to express grievance against Will in dispute accrued only when the respondents learnt about particulars of the Will.

Held, Deceased was owner of land situated in two villages – Mutation of land was sanctioned in favour of defendants on the basis of fabricated, false and forged Will dated 8.7.1993 – Mutation was got sanctioned ex parte and without notice to the plaintiffs on 28.7.1995 – Pleaded that plaintiffs came to know of alleged Will dated 8.7.1993 and order of Assistant Collector whereby mutation qua land was sanctioned on 28.7.1995 in favour of defendants – On 4.8.1997 when plaintiff Nos. 1 and 2 were served with a notice of appeal in which the alleged Will was mentioned before the SDO (Civil), Jalandhar – Mutation of land in village Jande Sarai was sanctioned in 1997 on the basis of natural succession. The appellants filed an appeal against sanction of mutation qua land in village Jande Sarai of which notice was received by the respondents in August 1997 and then they came to know of details of Will set up by the appellants. There is nothing on record suggestive of the fact that mutation of land in village Bullowal was sanctioned after notice to the respondents or they had knowledge thereof from a particular point of time. That being so, statement of Madan Lal that he knew about the Will the day Chint Ram died is of no consequence. He had not stated that he knew about particulars of the Will on that day. On the contrary, it has been clearly stated that respondents came to know about appellants having asserted their right on the basis of Will when they filed appeal against sanction of mutation in respect of land in village Jande Sarai. As such, cause of action to claim inheritance on the basis of natural succession accrued in the year 1997, thus, contention of appellants that suit is barred by limitation is not meritorious.

Resultantly, I do not find an error much less perversity in concurrent findings on above discussed factual and legal aspects recorded by the courts. In view of the aforesaid discussion, findings of the courts on the question of limitation can not be faulted with.

Present: Mr.Ashok Giri, Advocate for the appellants . Mr. R.S.Bajaj, Advocate for the respondents

Rekha Mittal, J.

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby claim of plaintiffs to their share in suit property on the basis of natural succession and grant of permanent injunction restraining the defendants from alienating the suit land to any one else, was decreed by the trial court vide decree and judgment dated 24.7.2007. The appeal preferred by unsuccessful defendants No. 1 to 3 (appellants herein) was dismissed by the Additional District Judge, Jalandhar and the court affirmed findings of the trial court rejecting Will dated 8.7.1993 propounded by appellants-defendants.

The suit land was previously owned by Chint Ram son of Ishar who died on 14.7.1993 at village Jande Sarai. He was survived by five sons Lachhman Dass, Darshan Ram (since deceased), Sucha Ram, Hans Ram and Dev Raj. Lachhman Dass and legal heirs of Darshan Ram, claimed right in the suit property on the basis of natural succession by challenging mutation of land situated at village Bullowal sanctioned in favour of appellants

on the basis of false, forged and fabricated Will dated 8.7.1993.

Counsel for the appellants has assailed concurrent findings primarily on three counts:-

- The Will set up by appellants has been proved, in accordance with law.
- Suit for declaration without seeking relief of possession is not maintainable.
- Suit filed on 21.11.1997 is barred by limitation.

Counsel would argue that appellants examined one of the attesting witnesses of the Will and his testimony is more than sufficient to prove the Will in compliance with the provisions of Section 68 of the Evidence Act. It is further argued that even appellate court, in the opening lines of para 17 of its judgment, has held that original Will dated 8.7.1993 was duly proved and required to be read into evidence. It is argued with vehemence that as the appellants have successfully proved the Will executed by their father Chint Ram, they are entitle to inherit to estate of Sh. Chint Ram to the exclusion of other class-I heirs of the deceased.

To bring home his contention with regard to suit being not maintainable for want of seeking possession, he has referred to the provisions of Section 34 of the Specific Relief Act, 1963 particularly explanation appended thereto. He has also relied upon judgment of the Kerala High Court **Gopakumar and others vs. Kamalakshy Purushothaman and others 2019 (3) RCR (Civil) 847.**

With regard to suit being barred by limitation, counsel would argue that in the plaint, it has been mentioned that cause of action accrued on 14.7.1993 the day of death of Chint Ram, 28.7.1995 the day mutation of village Bullowal was sanctioned by Assistant Collector IInd Grade, Bhogpur and further on 4.8.1997 when plaintiffs No. 1 and 2 were served with a notice of appeal before the SDO (Civil), Jalandhar. It is argued that as cause of action accrued to the plaintiffs on 14.7.1993, suit filed on 21.11.1997 being beyond a period of three years from the date of cause of action is clearly barred by limitation. In addition, it is argued that Madan Lal plaintiff No. 2 appeared in the witness box and in cross examination he had deposed that he had knowledge of Will on the day Chint Ram died. It is argued that if respondents-plaintiffs were aware of Will of Chint Ram on the day he died, suit for declaration to challenge mutation sanctioned on 28.7.1995 on the basis of Will is barred by limitation.

Counsel representing the respondents-plaintiffs has supported concurrent findings recorded by the courts with the submission that consistent factual findings cannot be intervened unless the same suffer from perversity or raise a question of law. It is argued that appellants have failed to make out a case that consistent findings either on the question of Will or issue of limitation suffer from an error much less being perverse. According to counsel, testimony of Bachan Singh Lambardar, the only witness examined to prove Will is not at all sufficient to comply with requirements of Section 63(c) of the Indian Succession Act read with Section 68 of Evidence Act. It is further argued that from first two lines of para 17 of the judgment of appellate court, it can not be construed that the court has held that Will has been proved in consonance with the provisions of Section 68 of the

Evidence Act. He would inform that in para 17, the court has held that Will has not been proved, in view of testimony of Bachan Singh Lambardar.

I have heard counsel for the parties, perused the paper book and records.

The first question for consideration is, whether the Will has been proved in accordance with law. The answer, at the outset, is in the negative. The appellants examined one of the attesting witnesses namely Bachan Singh Lambardar DW3. Perusal of examination in chief of the witness would reveal that his testimony is not at all sufficient to prove the ingredients of Section 63(c) of the Indian Succession Act. Testimony of Bachan Singh Lambardar is conspicuously silent with regard to drafting, execution of Will by Chint Ram. He has only deposed about signatures of himself, other attesting witness and Chint Ram before the Sub Registrar. A relevant extract from his testimony reads as follows:-

"I alongwith Sh. Chint Ram and another attesting witness was present. I along with other attesting witness and Chint Ram signed the Will, before Sub Registrar. Chint Ram appended his thumb impression. I identify my signatures and thumb impression of Chint Ram before Sub Registrar as mark C, D and E respectively. The other witness also signed before the Sub Registrar, which is mark F."

In cross examination, he has testified to the following effect:- "Chint Ram was not belonging to our village. He was also not my relative. I was not Lambardar of the village regarding which the property in dispute pertains. I was not at visiting terms with Chint Ram. He did not know me personally. When I appended my signatures the Will had already been scribed. I was asked by other attesting witness to sign the Will."

A conjoint reading of the aforesaid extract from deposition of Bachan Singh leads to no other conclusion than that the Will in question has not been proved in accordance with the provisions in law. That being so, the courts have rightly rejected claim of the appellants on the basis of Will dated 8.7.1993.

The plaintiffs sought declaration with regard to their being co- owners of suit land to the extent of a particular share on the basis of natural succession and as such, if their claim is accepted, they would become co- owners with the appellants-defendants who are also class-I heirs of deceased Chint Ram. Every co-sharer is treated to be in possession of every inch of joint land. As such, the respondents-plaintiffs would be entitle to joint possession of suit land being co-owners to the extent of share determined by the court. Since the respondents-plaintiffs could not seek possession nor partition of agriculture land before the civil court, contention raised by counsel for the appellants that suit for declaration simpliciter without seeking relief of possession is not maintainable, is patently misconceived and liable to be rejected. In the given circumstances, the appellants can not derive any advantage to their contention from the judgment **Gopakumar and others' case (supra)** wherein it has been held that the party which seeks declaration is entitle to press for relief of partition and possession of the suit property.

This brings the court to the question of limitation. The deceased was owner of land situated in two villages namely Bullowal and Jande Sarai. In para 3 of the plaint, there is reference

that mutation of land situated in village Bullowal was sanctioned in favour of defendants No. 1 to 3 on the basis of fabricated, false and forged Will dated 8.7.1993. It is further averred that mutation was got sanctioned ex parte and without notice to the plaintiffs on 28.7.1995. In para 4, it is pleaded that plaintiffs came to know of alleged Will dated 8.7.1993 and order of Assistant Collector IIInd Grade whereby mutation qua land at village Bullowal was sanctioned on 28.7.1995, in favour of defendants No. 1 to 3, on 4.8.1997 when plaintiff Nos. 1 and 2 were served with a notice of appeal in which the alleged Will was mentioned before the SDO (Civil), Jalandhar.

Indisputably, mutation in respect of land in village Bullowal was sanctioned on the basis of Will in the year 1995. However, mutation of land in village Jande Sarai was sanctioned in 1997 on the basis of natural succession. The appellants filed an appeal against sanction of mutation qua land in village Jande Sarai of which notice was received by the respondents in August 1997 and then they came to know of details of Will set up by the appellants. There is nothing on record suggestive of the fact that mutation of land in village Bullowal was sanctioned after notice to the respondents or they had knowledge thereof from a particular point of time. In the given circumstances, cause of action to express grievance against Will in dispute accrued only when the respondents learnt about particulars of the Will. That being so, statement of Madan Lal that he knew about the Will the day Chint Ram died is of no consequence. He had not stated that he knew about particulars of the Will on that day. On the contrary, it has been clearly stated that respondents came to know about appellants having asserted their right on the basis of Will when they filed appeal against sanction of mutation in respect of land in village Jande Sarai. As such, cause of action to claim inheritance on the basis of natural succession accrued in the year 1997, thus, contention of appellants that suit is barred by limitation is not meritorious.

Resultantly, I do not find an error much less perversity in concurrent findings on above discussed factual and legal aspects recorded by the courts. In view of the aforesaid discussion, findings of the courts on the question of limitation can not be faulted with.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed with costs.