



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

112

RSA-5444-2018 (O&M)

Date of Decision: 22.01.2025

Ramesh Chander Kaushik (now deceased) through his LRs ....Appellant

Versus

Om Parkash and others

....Respondents

**CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present: - Mr. Rajesh Bansal, Advocate for the appellant.

**NIDHI GUPTA, J.**

1. The plaintiff is in second appeal before this Court laying challenge to the concurrent findings returned by the learned Courts below whereby vide judgment and decree dated 12.04.2014 passed by the learned Civil Judge (Junior Division), Charkhi Dadri; duly affirmed in appeal by the learned Additional District Judge, Charkhi Dadri vide judgment and decree dated 05.03.2018, the suit of the appellants/plaintiff for declaration and mandatory injunction has been **dismissed**.

2. The parties shall hereinafter be referred to as per their status before the learned trial Court i.e. the appellants/ LRs of the plaintiff are being referred to as 'the plaintiff', whereas the respondents as 'defendants'.

The plaintiff had filed the present suit seeking declaration to the effect that parties to the suit are owners in possession of all movable and immovable properties left by Bhim Sain; **AND** Will No. 404 dated 09.01.2006 executed by Bhim Sain in favour of defendant No. 1 is wrong,



incorrect, null and void and based on fraud and misrepresentation and liable to be set aside. In the above-said suit, the plaintiff has also sought alternative relief that if the plaintiff and proforma defendants are not found in possession of the properties by the said Bhim Sain, then the plaintiff and proforma defendants are entitled to joint possession of those properties; **AND** further suit for mandatory injunction to the effect that defendant No. 1 is liable to be directed to disclose the details of the amounts if any received by him from any bank or any other institution on account of the alleged said Will; **AND** in case, defendant No. 1 is found to have received any such amount then necessary direction may kindly be given to him to return the shares of plaintiff and proforma defendants as all the parties to the suit are equally entitled to receive the said amount.

3. Brief facts as set out in the plaint are that Bhim Sain son of Bansi Ram son of Badri Parshad, R/o Ward No.13, Badhwana Gate, Charkhi Dadri was real brother of plaintiff, contesting defendant No.1, and proforma defendants no.2 to 5. He was married but his wife Smt. Naraini Devi died on 07.01.2006. Bhim Sain was having moveable and immovable properties in his name. He was owner in possession of agricultural land measuring 22 Kanal 03 Marla fully described in the plaint and he was also owner in possession of residential house and plots situated at Dadri. Shri Bhim Sain died issueless on 28.02.2006. He, along with proforma defendants and defendant No.1 is his legal heir and representative and they all are entitled to succeed to all his moveable and immovable properties in equal shares and except them there is no other legal heir of Bhim Sain. That upon the death of said Bhim Sain, plaintiff

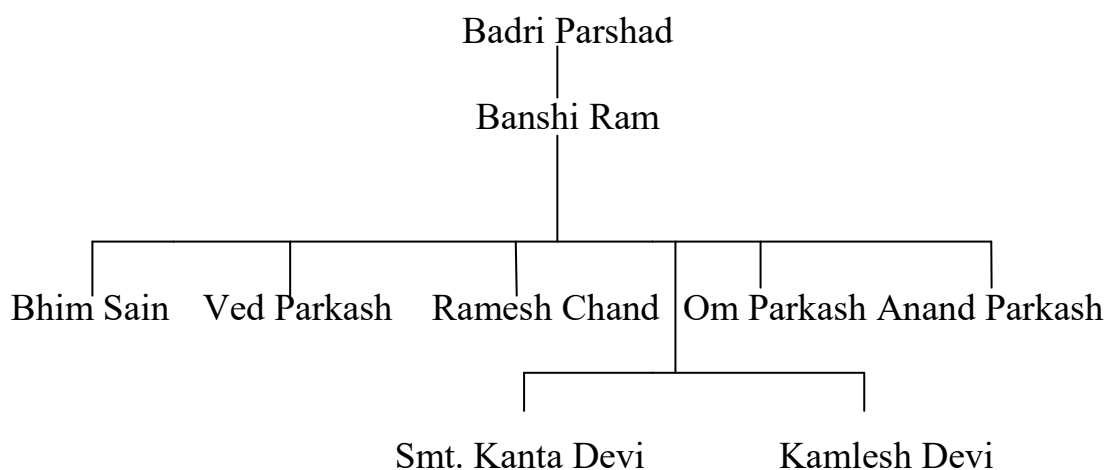


and other performa defendants, are entitled to get his property incorporated in their name in the revenue record. The said Bhim Sain was Ex.Indian Military personnel. He was an educated person and used to put his signatures. He never put his thumb impression on any document during his normal days of life. In the last days said Bhim Sain was suffering from Lung Cancer and he was not in his senses and was not able to do any act voluntarily. He was admitted in the Army Hospital (R & R), Delhi Cantt. on 11.01.2006 and he remained under treatment in that hospital, and he was discharged from that hospital on 28.01.2006 and his disease was described by the doctor as “A case of disseminated malignancy Bronchogenic Carcinoma”. Defendant No.1 is clever person and in order to deprive the plaintiff and performa defendants from succeeding to the properties of said Bhim Sain fraudulently in connivance with Deed Writer and witnesses got executed and registered an adoption Deed No.277 dated 15.02.2006 in favour of his son Mohit in collusion with the officials of Sub Registrar Charkhi Dadri. Though Bhim Sain never adopted Mohit. Consequently, upon knowing of this illegal alleged adoption deed plaintiff filed a civil suit No.254 of 2006 against defendant No.1, his wife and his son Mohit in the court of ACJ (SD), Charkhi Dadri challenging that adoption deed and in reply to that plaint, defendant No.1 Om Parkash filed his written statement dated 15.05.2007 wherein he disclosed execution and registration of Will No.404 dated 09.01.2006 on behalf of said Bhim Sain in his favour. At that time Bhim Sain was not in a position to execute the Will and the alleged Will No.404 dated 09.01.2006 be set aside on the following grounds: -



- (a) That said Bhim Sain was not in his sense and was not in sound state of mind and the alleged Will is not free from suspicious circumstances.
- (b) That defendant No.1 has played a fraud and misrepresentation in getting the alleged Will No.404 dated 09.01.2006 in his favour in collusion with Deed Writer, witnesses and officials of the office of Sub Registrar Charkhi Dadri.
- (c) That it is worthwhile to mention here that if the alleged Will is a genuine Will then why defendant No.1 failed to get the mutation on the basis of this Will entered regarding the said properties of Bhim Sain in the revenue record in his favour.
- (d) That if alleged Will was voluntarily executed by said Bhim Sain in favour of defendant No.1 then why Bhim Sain executed adoption deed No.277 dated 15.02.2006 in favour of son of defendant No.1.

4. Thus, the alleged Will is liable to be declared to be illegal, null and void and the same is not binding on the rights of the plaintiff and proforma defendants. The pedigree table is as under:-



5. Upon notice, defendant No. 1-Om Parkash put in appearance. As the remaining defendants failed to appear, they were proceeded against *ex parte*. Defendant No. 1/respondent No. 1 herein resisted the suit by way of raising many objections, *inter alia*, regarding maintainability of



the suit, no *locus standi*, the suit being false and frivolous, and barred under Order II Rule 2 and Section 11 CPC etc.

6. No replication to the written statement filed by defendant No. 1 was filed by the plaintiff.

7. On the basis of the pleadings of the parties, following issues were framed by the learned trial Court vide order dated 29.09.2012: -

- “1. *Whether the plaintiff alongwith proforma defendants is entitled to the relief of declaration qua the suit property as prayed for on the ground alleged in the plaint? OPP*
2. *Whether the plaintiff along with proforma defendants is entitled to the relief of mandatory injunction as prayed for on the ground alleged in the plaint? OPP*
3. *Whether the plaintiff has no locus standi to file the present suit? OPD*
4. *Whether the suit of the plaintiff is not maintainable in its present form? OPD*
5. *Whether the suit of the plaintiff is false and frivolous and has been filed just to harass the defendants? OPD*
6. *Whether the suit is barred under Order 2 Rule 2 and Section 11 of CPC? OPD*
7. *Whether the suit is liable to be rejected on the ground of non-joinder of necessary parties? OPD*
8. *Relief.”*

8. On the basis of oral and documentary evidence adduced by the parties, the learned trial Court decided issue Nos.1 and 2 against the plaintiff and in favour of the defendants; issues No. 3to 7 decided against the defendants in view of the fact that onus to prove the said issues was on defendants, however, during arguments learned counsel for the defendants neither pressed these issues nor lead any evidence



thereupon; and dismissed the suit of the plaintiff with costs vide judgment and decree dated 12.04.2014.

9. Against the above said judgment and decree dated 12.04.2014, the plaintiff had approached the Ist Appellate Court by way of Civil Appeal No.185 of 2014/2017, which was dismissed by the learned Additional District Judge, Charkhi Dadri vide judgment and decree dated 05.03.2018. Hence, the present second appeal.

10. Learned counsel for the appellants-plaintiff, *inter alia* submits that Bhim Sain-Testator of Will No. 404 dated 09.01.2006 (Ex. P-3), had died barely 02 months later, on i.e. 28.02.2006. As such, the Will on basis of which defendant No.1 is claiming inheritance, is shrouded in suspicious circumstances, and could not have been relied upon by the ld. Courts below in non-suiting the plaintiff. It is submitted that it was the clear case of the plaintiff before the learned Courts below that Bhim Sain was not in his senses and was not in sound state of mind at the time of execution of Will Ex. P-3, therefore, the same is not free from suspicious circumstances. The plaintiff was not even allowed to lead entire evidence in this regard before the learned Courts below.

11. The second ground on which the plaintiff has been non-suited by both the Courts below is that Bhim Sain had registered an Adoption Deed No. 277 dated 15.02.2006 (Ex. P-1), vide which Bhim Sain had adopted Mohit son of defendant No. 1. It is submitted that the said Adoption Deed was also registered under suspicious circumstances, inasmuch as, the Executor, namely, Bhim Sain, had expired on 28.02.2006; and from 11.01.2006 to 28.01.2006 was admitted in



hospital. It is accordingly, prayed that the impugned judgments and decrees of both the Courts below are based on surmises and conjectures and without appreciating the correct facts on record and the same may, therefore, be set aside.

12. No other argument is raised on behalf of the appellant.

13. I have heard learned counsel for the appellant and perused the case file in great detail.

14. At the very outset, it is pertinent to mention herein that the matter pertains to the 2018 and notice is yet to be issued in the same. Perusal of the order-sheets shows that earlier this case was listed for hearing for 08 times i.e. on 08.01.2019, 23.07.2019, 21.01.2020, 04.12.2023, 20.02.2024, 05.03.2024, 18.07.2024 and 23.10.2024; out of which on 02 dates i.e. 23.07.2019 and 23.10.2024, the appellant had gone un-represented; whereas on the remaining 06 dates the case was adjourned at the request of learned counsel for the appellant.

15. It has been argued on behalf of the plaintiff-appellants that claim of defendant no.1 on the basis of the alleged Will No. 404 dated 09.01.2006 (Ex. P-3) is liable to be set aside as Testator-Bhim Sain was not in sound mental condition at the time of execution of the said Will. However, the plaintiff led no evidence whatsoever to prove his contention. Merely because Bhim Sain had died within a few weeks of executing the impugned Will cannot in itself be stated to indicate any mental indisposition on part of the testator. The reason for the exclusion of the plaintiff from the Will of Bhim Sain is due to the fact that they were on inimical to each other. In this regard, the relevant findings of



the learned trial Court as contained in para-No. 18 (at page Nos. 30 and 31 of the paper-book) of the judgment and decree dated 12.04.2014, reads as under:-

*“18. So far as the exclusion of plaintiff and proforma defendants from inheriting the property of testator is concerned otherwise also it is quite natural that when a person who is on inimical terms with a person, cannot bequeath his property to that person and more so when he has other person in the same degree having good relations. The plaintiff who is now claiming the property of testator had very strained relations with the testator during his lifetime till the last day. Therefore, it was very natural for the testator to exclude them from inheriting his property after his death. Rather he was so inimical to the plaintiffs and other brothers that he even adopted defendant no. 1's son Mohit vide adoption deed No. 277 dated 15.02.2006 in order to doubly ensure that no part of his property would go to the plaintiffs and proforma defendants who got his nerves strained during his lifetime. After adoption of Mohit by the testator a mutation No. 4316 was also got sanctioned after death of testator Bhim Sain in favour of Mohit, adopted son of Bhim Sain.”*

16. It has also come on record that Testator-Bhim Sain and his wife were jointly residing with Om Parkash-defendant No. 1 and were on very good terms with him. It was in this background that Bhim Sain had bequeathed his property to Om Parkash in lieu of service rendered by him. Admittedly, there was even continuous civil and criminal litigation between the plaintiff and Testator-Bhim Sain. The plaintiff had also inflicted grievous injuries to Bhim Sain with sharp edged weapon whereafter, a case under Sections 325/326 IPC was also registered against the plaintiff, in respect of which judgment Ex. D-3 was produced on record. Moreover, the impugned Will No. 404 dated 09.01.2006 (Ex. P-3) was executed by Bhim Sain in the presence of attesting witnesses



who had affixed their signatures/thumb impressions after understating the contents of the same. The said fact was proven by the deposition of DW2 Kuldeep Singh, Numberdar, who was an attesting witness to the aforesaid Will. The relevant findings in this regard of the learned Ist Appellate Court as recorded in para Nos. 8 and 9 (at pages 54 and 55 of the paper-book) of the impugned judgment dated 05.03.2018, reads as follows:-

*“8. After having heard both the sides at length, this Court has come to conclusion that initial point which falls for determination in this case is if Bhim Sain testator validly executed Will or not. In this regard, this Court is of the considered opinion that the Will Ex.P3/Ex.D1 was attested by two attesting witnesses namely Kuldeep Singh Lumberdar and Ajay Kumar, which was registered with Sub Registrar, Dadri. In order to prove the Will, the defendant has examined DW2 Kuldeep Singh Lumberdar, Charkhi Dadri. This witness has deposed that the Will was in fact executed by Bhim Sain. Bhim Sain put his thumb impression in presence of the witnesses and the witnesses attested the Will in presence of testator Bhim Sain. The plaintiff to the contrary has failed to prove that there was any fraud committed by Om Parkash defendant. The plaintiff has also not been able to prove a fact that testator Bhim Sain was not in sound state of mind and was not in senses on 09.01.2006 at the time of execution of Will. The fact that Bhim Sain died on 15.02.2006 after couple of days from execution of Will is not itself a proof that Bhim Sain was not in state of sound mind or he was suffering from any illness. Another fact, which disproves the contention of plaintiff that after execution of Will, Bhim Sain testator has also executed an adoption deed Ex.P1, which was also registered with Sub Registrar and same has not been challenged by the plaintiff on the ground that on the date of execution of adoption deed, Bhim Sain was not in sound state of mind or not was in senses, therefore, in aforesaid circumstances Will Ex.P3/Ex.D1 stands proved. If it is so, the plaintiff miserably failed to prove that the Will is outcome of fraud or any other reason.*



9. *Insofar as exclusion of the plaintiff Ramesh from succession by testator Bhim Sain is concerned, this Court is of the considered opinion that Bhim Sain testator has mentioned in his Will that Ramesh and Ved Parkash were inimical to him and both of them dragged him into litigation of civil as well criminal nature. The contention is duly fortified by the defendant by production of Ex.D3 judgment in a criminal case pertaining to FIR No.131 dated 11.08.2005. The aforesaid judgment suggests that Bhim Sain levelled allegations against Ramesh for commission of offence under Sections 324, 326 and 506 of IPC. Therefore, there was every reason available with the testator not to give his property to Ramesh.”*

17. As regards, second plank of argument advanced on behalf of the plaintiff that he had also challenged the Adoption Deed No. 277 dated 15.02.2006 (Ex. P-1), on the basis of which defendant No. 1-Om Parkash was made beneficiary, it is very candidly admitted by learned counsel for the appellants that the plaintiff had challenged the said Adoption Deed by way of filing separate civil suit which was dismissed with costs by the both the Courts below vide judgments and decree dated 05.01.2012 and 26.02.2023, respectively; and the said adoption deed has been upheld up to this Court by way of order dated 06.02.2020, passed by a co-ordinate Bench of this Court in RSA-4497-2017, which is reproduced as under:-

*“The appellant/plaintiff has challenged the judgments and decrees of the Courts below whereby the suit preferred by him for declaration that the adoption deed dated 15.02.2006 is null and void has been dismissed.*

*Learned counsel for the appellant/plaintiff contends that the adoption deed was registered under suspicious circumstances inasmuch as the executor, namely, Bhim Sen Kaushik had expired on 28.02.2006 while the adoption deed was registered on 15.02.2006. He also contends that Bhim Sen Kaushik was admitted in hospital from 11.01.2006 to 28.01.2006. The wife of the executor, namely, Narayani Devi had expired on 07.01.2006 and, therefore, the purported*



*ceremonies towards adoption could not have taken place on 14.01.2006.*

*Heard.*

*I do not find any merit in the contentions of the learned counsel for the appellant/plaintiff that the adoption deed was executed under suspicious circumstances and, therefore, it has to be treated as null and void.*

*The adoption deed was registered in the office of Sub-Registrar, Charkhi Dadri in Book No. 4, Jild No. 26 at page No. 161 at serial No. 277. Mutation No.4316 in terms of adoption deed had also been entered and sanctioned on 30.06.2006 in favour of respondent/defendant No.1. Bhim Sen Kaushik adopted respondent/defendant No. 1 - Mohit, who is the son of their third brother, namely, Om Parkash Kaushik.*

*DW1 Shri Bhagwan, who was the Registry Clerk, had duly proved the execution of the adoption deed. DW2 Jagdish Singh, Computer Operator, had also deposed that he had certified the adoption deed (Ex. DW1/A) by identifying the photos which had been taken by him. Udai Singh, Deed Writer, had also proved the adoption deed by deposing as DW3. DW4 Raje Ram, who was living in the neighbourhood of the executor, had also proved the adoption deed. The attesting witness, namely, Kuldeep, Numberdar of the village, had also deposed as DW5 and proved the adoption deed.*

*It is also borne out from the material on record that Bhim Sen Kaushik, the executor of the adoption deed, who was the brother of the appellant/plaintiff had lodged a criminal case against the appellant/ plaintiff. It is rather ironical that the appellant/plaintiff against whom Bhim Sen Kaushik had initiated criminal proceedings is now challenging the adoption deed executed by Bhim Sen Kaushik in favour of his nephew, who is the son of the third brother. The appellant/plaintiff appears to have been inimical towards Bhim Sen Kaushik during his lifetime, but now under the garb of the instant suit by challenging the adoption deed wants to usurp his property.*

*The documents with regard to the medical treatment of the executor Bhim Sen Kaushik at the Army Hospital, Delhi have been tendered by the appellant/plaintiff as Ex. P4 to Ex. P22, but those were not certified by the medical officer, who had prepared the same.*

*Furthermore, Narayani Devi, the wife of Bhim Sen Kaushik, is stated to have expired on 07.01.2006, but it has come in evidence that she did not have good relations with Bhim Sen Kaushik and had been residing separately. I do not find anything suspicious in ceremonies towards adoption being performed on 14.01.2006. It is possible that after the death of his wife, Bhim Sen Kaushik wanted to have his heir*



*to inherit his property and, therefore, executed the adoption deed.*

*In the wake of aforementioned facts and circumstances, it is manifest that the appellant/plaintiff has not been able to rebut the presumption of truth attached to the registered adoption deed in terms of Section 16 of the Hindu Adoption and Maintenance Act, 1956.*

*Consequently, I do not find any merit in this appeal, which stands dismissed.”*

18. Learned counsel for the appellants is unable to dispute or controvert the above said evidence/findings or give any satisfactory explanation for the same.

19. In view of the above, present appeal is **dismissed**.

20. Pending application(s) if any also stand(s) disposed of.

**22.01.2025**  
*rishu*

**( NIDHI GUPTA )**  
**JUDGE**

**Whether speaking/reasoned**      **Yes/No**

**Whether Reportable**              **Yes/No**