

Presented on : 12-08-2016
Registered on: 12-08-2016
Decided on : 02-02-2018
Duration : Y M D
01 05 20

COURT OF CIVIL JUDGE (Jr.Dn.), MOTALA,
DIST. BULDANA

(Presided over by D.R. Dande)

Reg.C.S.No No.41/2016

Exh.33

1. Kamlabai Rupchand Jain,
Age 80 yrs, Occ: Household

2. Subhash Rupchand Jain,
Age 65 yrs, Occ: Agri.

3. Gautam Rupchand Jain,
Age 53 yrs, Occ: Agri.

All R/o Korhala, Tq. Motala
Dist. Buldana

– Plaintiffs.

-Versus-

1. Chandrakalabai Parasmalji Kotecha,
Age 60 years. Occ. Household,
C/o. Parasmalji Dhanrajji Kotecha,
R/o Tondapur, Tq. Jamner,
Dist. Jalgaon Khandesh,

2. Prabhawati Sagarmalji Bamb,
Age 50 years. Occ. Household,
C/o Sagarmalji Premchandji Bamb,
Near Maheshwari Bhawan,
Artillary road, Nashik Road,
Nashik.

3. Gendabai Shobhachandji Tated,
Age 45 years. Occ. Household,
C/o. Shobhachandji Tated,
Navi Wasti, Badnera
Dist. Amravati

4. Sunita Bhikamchandji Bora,
Age 40 years. Occ. Household,
Co. Bhikamchandji Uttamchandji Bora,
Jijamata Square, Karanja Lad,
Dist. Washim

5. Sangita Vijaykumar Banwat,
Age 35 years. Occ. Household,
C/o. Vijaykumar K Banwat,
R/o Shanti Nagar Colony,
Niphad, Dist. Nashik,

6. Anitabai Sunilkumarji Ostwal,
Age 30 years. Occ. Household,
Co. Sunilkumarji Dagdulalji Ostwal,
R/o Shendurni, Tq. Jamner,
Dist. Jalgaon Khandesh,

7. Chandrakalabai Punamchand Jain,
Age 55 years. Occ. Household,
R/o Korhala Tq. Motala
Dist. Buldana

--Defendants

Suit Claim: For Declaration

Shri N.B.Dhoot – Learned counsel for plaintiffs

Shri R.V.Patil – Learned counsel for defendant No.3

Suit proceeded an exparte against defendant No.1 , 2 & 4 to 7

JUDGMENT

(Delivered on 2nd February, 2018)

1. This suit is for declaration that, plaintiffs become owner of suit property by virtue of will-deed of Rupchand Jain.

Subject matter of the suit –

2. (A) Land Gut No.141, Area 4H 90R, Share 02H 64 R situated at village Korhala Bazar, Tq. Motala Dist. Buldana

(B) Land Gut No.100, Area 12H 08R, Share 0H 81 R situated at village Korhala Bazar, Tq. Motala Dist. Buldana

(C) Property No.216, area 375 sq. feet with construction standing thereon, situated in Ward No.1, of village Korhala, Tq. Motala Dist. Buldana

(D) Property No.262, area 300 sq. feet with construction standing thereon, situated in Ward No.1, of village Korhala, Tq. Motala Dist. Buldana

(Herein after above referred all the properties are jointly referred as to “suit property”).

3. In nutshell, case of plaintiff is that-
Suit property (i.e. A, B, C & D) is self acquired property of Rupchand Jain. Rupchand Jain departed on 07-12-

2009 by leaving behind plaintiffs and defendants as his legal heirs. Rupchand during his lifetime partitioned ancestral properties and has given separate share to his heirs. In order to avoid any dispute between the legal heirs on the count of shares in his self-acquired property, Rupchand as per his wish, in presence of two witnesses executed valid will-deed on 27-05-2004. In the period of execution of will-deed, physical and mental condition of Rupchand was sound.

Rupchand bequeathed properties 'A' & 'B' (land Gut No.141 & 100) in favour of plaintiff No.1 Kamlabai Jain, property 'C' (house property No.216) in favour of plaintiff No.2 Subhash and property 'D' (house property No.262) in favour of plaintiff No.3 Gautam. After demise of Rupchand, plaintiffs become exclusive and full owner of the suit property and they are in possession of the property bequeathed to them. However, Talathi and Gram Panchayat officer refused to record the names of plaintiffs as owner of respective properties bequeathed to them by Rupchand. Defendants are also aware that, suit property is bequeathed in favour of plaintiffs. As Talathi and Gram Panchayat Officers refused to record names of plaintiffs as owner of suit property, plaintiffs constrained to file this suit.

4. Suit summons duly served to defendants. Defendant No.3 Gendabai appeared before the Court, she filed pursis on record at Ex. 19 and admitted claim of plaintiffs. Defendant No.1, 2 and 4 to 7 though duly served, did not turn up towards the Court, hence suit proceeded an exparte against them.

5. Heard learned counsel Shri N.B.Dhoot for plaintiffs.
Nobody appeared for hearing on behalf of defendants.

6. Following points arise for my determination, I recorded my findings against each of them with reasons as follows.

Sr. No	POINTS	FINDINGS
1	Do plaintiffs prove that, Rupchand Jain bequeathed Property 'A' & 'B' (Land Gut No.141 & 100) in favour of plaintiff No.1 Kamlabai Jain ?	In the affirmative.
2	Do plaintiffs prove that, Rupchand Jain bequeathed Property 'C'(House property No.216) in favour of plaintiff No.2 Subhash Jain ?	In the affirmative.
3	Do plaintiffs prove that, Rupchand Jain bequeathed Property'D' (House property No.262) in favour of plaintiff No.3 Gautam Jain ?	In the affirmative.
4	Do plaintiffs proved that, they become owners of the respective property/ies bequeathed to them by Rupchand Jain ?	In the affirmative.
5	Are plaintiffs entitled for the relief sought ?	In the affirmative.
6	What order, decree ?	..As per final order.

REASONS

7. In order to substantiate averments made in the

plaint, plaintiffs have examined plaintiff No.2 Subhash Jain at Exh.22. After his evidence, plaintiffs examined Ramshankar Gaikwad as P.W.2 vide Ex.30, who is one of the attesting witness on will-deed.

Besides oral evidence, plaintiffs proved contents of will-deed Exh.31. Reliance is also placed on death certificate of Rupchand Exh.23, 7/12 extract of land Gut No.141 Exh.25, Assessment list of house property No.262 Exh.26, Assessment list of house property No.216 Exh.27.

None of the defendants entered in witness-box nor they have taken pains to cross-examine the plaintiffs' witnesses.

AS TO POINT No. 1 to 3 :

8. Plaintiff No.2 Subhash swears that, his interest and interest of plaintiff No.1 & 3 is common, hence, he filed his affidavit of examination in chief on behalf of all plaintiffs. He further swears that, Rupchand was his father, he bequeathed properties 'A' & 'B' (land Gut No.141 & 100) in favour of plaintiff No.1 Kamlabai Jain, property 'C' (house property No.216) in favour of plaintiff No.2 Subhash and property 'D' (house property No.262) in favour of plaintiff No.3 Gautam. Rupchand executed valid will-deed in favour of him and other plaintiffs on 27-05-2004. His father departed on 07-12-2009. He and plaintiff No.1 & 3 become owner of the properties bequeathed to them by Rupchand, who is his father.

9. It is pertinent to note that, evidence of plaintiff No.2 remained unchallenged on record.

In order to prove the contents of the will-deed, plaintiffs have examined one of the attesting witness Ramshankar Gaikwad at Exh.30. He swears that, on 27-05-2004, Rupchand executed will in favour of plaintiffs. He further deposed that, at the time of execution of will, mental and physical condition of Rupchand was sound. He identified signature of Rupchand on the will. He also deposed that, in his presence Rupchand put his signature on the will-deed and in presence of Rupchand he put his signature on will-deed. He further deposed that, prior to signing the will-deed, the document of will was read-over to witnesses and Rupchand and thereafter, Rupchand signed will-deed and he signed that will-deed in the capacity of attesting witness.

10. In order to appreciate evidence available on record, it is necessary to reproduce Sec.63 of Indian Succession Act.

"Section 63: Execution of unprivileged Will.- Every testator, not being a soldier employed in an expedition or engaged in actual warfare, (or an airman so employed or engaged) or a mariner at sea, shall execute his Will according to the following rules:

(a) The testator shall sign or shall affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction.

(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as Will.

(c) The Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses shall sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

11. It is clear from Sec. 63 that, the attesting witness must state that each of the two witnesses has seen the executor sign or affix his mark to the instrument or has seen some other persons sign the instrument in the presence and by the direction of the executant. The witness should further state that, each of the attesting witnesses signed the instrument in the presence of the executant. These are the ingredients of attestation and they have to be proved by the witnesses. The word 'execution' in [Section 68](#) includes attestation as required by law.

12. Now the question is that, whether defendant proved the Will ?

I would like to start this discussion with land mark Judgment of Hon'ble Supreme Court in the case of **Savithri & Ors vs Karthyayani Amma & Ors D/on 12 October 2007 (Civil Appeal No.4882 of 2007) (2007) 11 SCC 621**, where in Hon'ble Supreme Court in para No.14 has observed that, "The legal requirements in terms of the said provisions are now well-settled. A Will like any other document is to be proved in terms of the provisions of the [Indian Succession Act](#) and the [Indian Evidence Act](#). The onus of proving the Will is on the propounder. The testamentary capacity of the propounder must also be established. Execution of the Will by the testator has to be proved. At least one attesting witness is required to be examined for the purpose of proving the execution of the Will. It is required to be shown that, the Will has been signed by the testator with his free Will and that at the relevant time he was in sound disposing state of mind and understood the nature and effect of the disposition. It is also required to be established that he has signed the Will in the presence of two witnesses who attested his signature in his presence or in the presence of each other. Only when there exist suspicious circumstances, the onus would be on the propounder to explain them to the satisfaction of the court before it can be accepted as genuine".

13. By examining Ramshankar who is one of the attesting witness of will-deed, plaintiffs proved contents of will-deed. His evidence is as per the requirements mentioned in S.63

of Indian Succession Act. Will-deed is in favour of wife and sons of Rupchand. It is quite natural that Rupchand bequeathed suit property to his wife and sons.

14. On perusal of will-deed, it is clear that, Rupchand bequeathed properties 'A' & 'B' to plaintiff No.1 Kamlabai, property 'C' to plaintiff No.2 Subhash and property 'D' to plaintiff No.3 Gautam. There are no suspicious circumstances which creates doubt regarding the execution/ genuineness of will-deed. Absence of defendants in the case, despite of service of summons, shows that, they have nothing to say on the claim of plaintiffs. In fact def. no.3 admitted claim of plaintiffs. So, in my opinion, plaintiffs proved that, Rupchand bequeathed properties 'A' & 'B' to plaintiff No.1 Kamlabai, property 'C' to plaintiff No.2 Subhash and property 'D' to plaintiff No.3 Gautam. Hence, I answer Point No. 1 to 3 in the affirmative.

AS TO POINT No. 4 & 5 :

15. Plaintiffs have filed death certificate of Rupchand at Exh.23. On the day of death of Rupchand plaintiffs become owners of respective properties bequeathed to them. So, plaintiffs are entitled for the declaration as prayed. Hence, I answer Point No.4 & 5 in the affirmative.

AS TO POINT No. 6:

16. In view of my affirmative findings to Point No. 1 to 5, suit is deserves to be decreed. Accordingly, following order.

ORDER

1 Suit stands decreed.

2. It is hereby declared that, plaintiff No.1 Kamlabai Jain, become owner of properties 'A' & 'B' (Land Gut No.141 & 100), situated at village Korhala-Bazar, by virtue of valid will-deed of Rupchand Jain dated 27-05-2004.

3. It is hereby declared that, plaintiff No.2 Subhash Jain become owner of property 'C' (house property No.216) situated at village Korhala-Bazar, by virtue of valid will-deed of Rupchand Jain dated 27-05-2004.

4. It is hereby declared that, plaintiff No.3 become owner of property 'D' (house property No.262) situated at village Korhala-Bazar, by virtue of valid will-deed of Rupchand Jain dated 27-05-2004.

5. Decree be drawn-up accordingly.

Sd/-

Dt. 02-01-2018

(**D. R. Dande**)
Civil Judge (Jr.Dn.), Motala,
Dist. Buldana.

Certificate :

I affirm that, the contents of this PDF File are same words for words, as per the original Judgment.

Name of Stenographer: S.E.Chaudhari (L.G.)

Name of the Court : Civil Judge (Jr.Dn.) Motrala
Dist. Buldana.

Date of Judgment : 02-01-2018