

IN THE SUPREME COURT OF INDIA
 CIVIL APPELLATE JURISDICTION
 CIVIL APPEAL No.4457 OF 2004

RAM RAKHA

.....APPELLANT

VERSUS

SOHNU & ORS.

.....RESPONDENTS

O R D E R

Having failed to convince the learned Single Judge of the Himachal Pradesh High Court to overturn the judgment of District Judge, Bilaspur (for short, 'the lower appellate Court') whereby the suit for possession filed by the respondents was decreed except to the extent of share of respondent No.1, the appellant has filed this appeal.

In the suit filed by them, the respondents claimed possession of the property of Lakhu by asserting that they were his heirs being the sons of his brother. The appellant contested the suit on the premise that Smt. Shayami, who was said to be the second wife of Lakhu had executed Will dated 1.6.1975 in his favour. The trial Court held that even though no marriage had taken place between Lakhu and Shayami, the latter had been living with him and the mutation effected in her favour was valid. The trial Court further held that Smt. Shayami had executed Will in favour of the appellants and the same was duly proved.

The lower appellate Court analysed the pleadings of the parties and evidence produced by them and declared that the Will allegedly executed by Smt. Shayami was not valid. The lower appellate Court further held that the respondents are entitled to get the assets of Lakhu. Accordingly, the appeal was allowed and decree for possession was passed in favour of the respondents except to the extent of share of respondent No.1.

At the time of admission of the second appeal, the High Court framed the following questions of law:

"1. Whether the suit of the plaintiffs-respondents was within limitation?

2. Whether the District Judge has misread, misappreciated the evidence on record to come to the conclusion that the Will in favour of appellant-defendant was not executed in accordance with law and is shrouded with suspicious circumstances?"

The learned Single Judge overruled the objection of limitation raised by the appellant by recording the following reasons:

"So far the objection of limitation is concerned, it was specifically raised by the defendant and issue No.3 pertained to it, but the Sub Judge 1st Class had not given any findings in respect thereof. The plaintiffs who were the appellants before the District judges did raise a ground of appeal that the Sub Judge 1st Class had not given his findings on issue No.3 pertaining to the point of limitation but it has not been discussed by the District Judge in his judgement. Therefore, the learned Counsel for the defendant has vehemently urged that the appeal deserves to be accepted and the case remanded to the Sub Judge 1st Class for giving his findings in respect of the point of limitation. For accepting this prayer of the learned Counsel it is necessary for him to prima facie show that how the suit of the plaintiff is time barred, which he has not been able to do.

So far the mutation of inheritance of Lakhu in favour of Smt. Shayami is concerned, it was attested on 30.12.1974 and the plaintiffs could not assail it having accepted it for such a long period. Smt. Shayami had died on 17.8.1981 and the plaintiffs had filed the suit on 18.12.1981 within a period of less than five months, assailing the execution and validity of the Will on the basis of which the defendant claimed the title over the suit land. Therefore, it cannot be said that the suit of the plaintiff was time barred."

The learned Single Judge then considered the question whether the Will allegedly executed by Shayami was valid and observed:

"Though, the defendant had produced Mehtab Singh, DW-2 and Bishamber, DW-3, the marginal witnesses to prove the execution of the Will but their evidence was rejected by the District Judge because of the material contradictions found therein. Mehtab Singh, DW-2 has admitted in his cross-examination that before he reached, the Will was already scribed by the Petition Writer, whereas Bishambar, DW-3 has stated that he along with Mehtab Singh, DW-2 and other persons, was taken to the Petition Writer at Ghumarwin by Smt. Shayami for the purpose of executing the Will. Both these witnesses have stated that after the execution of the Will all of them went to the Sub Registrar for its registration, but this statement is belied as the date of execution of the Will is 1.6.1975, date of its entry in the register of the Sub Registrar is 1.7.1975, date of its presentation before the Sub Registrar is 21.7.1975 and date of its entry in the Vahi of the Sub Registrar is 9.8.1975. The defendant has not at all cared to explain these discrepancies which create a serious doubt about the execution as well as the validity of the Will."

We have heard Shri R. D. Upadhyay, learned counsel for the appellant and Shri Devendra Singh, learned counsel for the respondents and perused the record. In our view, the finding recorded by the lower appellate Court, which was approved by the learned Single Judge of the High Court that the Will allegedly executed by Smt. Shayami was shrouded with mystery and execution thereof was not proved is based on correct analysis of the evidence produced by the parties and there is no valid ground or justification for this Court's interference with that finding.

The appeal is accordingly dismissed.

.....J.
(G.S.SINGHVI)

.....J.
(V.)

GOPALA GOWDA)
NEW DELHI;
JULY 18, 2013.

ITEM NO.102

COURT NO.2

SECTION XIV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CIVIL APPEAL NO(s). 4457 OF 2004

RAM RAKHA

Appellant (s)

VERSUS

SOHNU & ORS.

Respondent(s)

(With appln(s) for Raising additional grounds and with office report)

Date: 18/07/2013 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE V. GOPALA GOWDA

For Appellant(s) Mr. R.D. Upadhyay, Adv.

For Respondent(s) Mr.Devendra Singh, Adv.

For Resp.Nos.4, Mr.Anant K.Vatsya, Adv.
5, 6 and 9

UPON hearing counsel the Court made the following
O R D E R

The appeal is dismissed in terms of the signed order.

(Satish K.Yadav)
Court Master

(Usha Sharma)
Court Master

(Signed order is placed on the file)