



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 5887 OF 2009

MOHAN LAL ... APPELLANT

VERSUS

NAND LAL ... RESPONDENT

JUDGMENT

N.V. RAMANA, J.

This appeal by special leave is directed against the judgment dated 29th November, 2006 passed by the High Court of Madhya Pradesh, Bench at Indore in First Appeal No. 239 of 1996 whereby the High Court while confirming the judgment of the trial Court, dismissed the appeal preferred by the appellant with costs.

2. In the year 1989, the respondent herein instituted a Suit, before the District Judge, Indore seeking ejectment of his brother—the appellant herein from the suit property and also claiming mesne profits. The defendant—appellant herein contested the Suit on the ground that he got half share in the disputed property as it originally belonged to his late maternal grandfather who was survived by only two daughters. On the death of his grandfather his mother entered the succession and he has been staying with his mother in the suit property. Therefore the plaintiff—respondent cannot claim to be the sole owner of the suit property and the Suit itself is misconceived. Subsequently, the respondent—plaintiff amended the plaint to the effect that during the lifetime of his grandfather, late Goverdhanlal bequeathed the house property by executing a Will on 9th September, 1945 in favour of the plaintiff, and after the death of his grandfather in the year 1947, he has become sole owner of the Suit property. Taking into account the Will dated 9.9.1945, the trial Court decreed the Suit in favour of the respondent—plaintiff. The aggrieved defendant—appellant herein filed first appeal before the High Court. By the judgment

impugned herein, the High Court confirmed the judgment of the trial Court and dismissed his appeal. Hence, the appellant is before us in this appeal assailing the findings of the Courts below.

3. We have heard learned counsel for the parties and carefully gone through the material on record.

4. The case of the appellant is that he is entitled to half share in the disputed property being grandson of late Goverdhanlal and his name was also mutated in the municipal records. The Will in question was put in evidence by the plaintiff by amending the plaint after the filing of written statement by him. It was not even executed in accordance with the provisions of Sections 61 and 63 of the Indian Succession Act and therefore, it cannot be taken into account as a valid and genuine one under the Evidence Act. Further argument on behalf of the appellant is that late Goverdhanlal has two surviving daughters, namely, Manibai (mother of the parties) and Durgabai and after the death of Durgabai, her daughters

Sarjubai and Rajubai also acquired rights on the disputed property and therefore they are necessary parties to the Suit, but none of these legal heirs of Late Goverdhanlal was made a party to the Suit. Under these circumstances, the Courts below could not have believed the Will to be a genuine document, but by decreeing the Suit in favour of the plaintiff—respondent on the basis of the said Will, both the Courts below have committed an error or law.

5. On behalf of the respondent-plaintiff it was submitted that at the time of execution of the Will on 9th September, 1945 the respondent—plaintiff alone was the male child in the family and the Will was written by Late Goverdhanlal, who was an advocate by profession, in his own handwriting. At the time of death of Late Goverdhanlal, the respondent-plaintiff was about 13 years age and the appellant-defendant was born about 8 years after the death of Late Goverdhanlal. The appellant, being younger brother of the respondent, was permitted to live in the disputed property with an assurance from him that he would vacate the house and hand over vacant possession of the

house to the respondent when demanded. But the appellant failed to keep his promise and dishonestly got his name mutated in the records of property tax. The Courts below have rightly decided the matter after assessing the witnesses and taking the Will into consideration and therefore the appeal at hand deserves to be dismissed.

6. Now the short question that arises for consideration of this Court in this appeal is whether the Courts below were right in decreeing the suit in favour of the respondent—plaintiff on the basis of the Will.

7. It is not in dispute that the Will was executed by the testator in the year 1945 and it was drawn in the own handwriting of the executant himself. His handwriting was also duly proved by PW5—Nandlal Nagar, grandson-in-law of late Goverdhanlal, who used to correspond with him and thereby well acquainted with the handwriting of the testator. The argument that the Will lacks credibility because the idea of bringing it on record was an afterthought of the respondent—

plaintiff, that too after filing the written statement, cannot be sustained for the reason that PW2—Tushar Akolekar, Clerk of Indore Paraspar Sahkari Bank, clearly deposed, supported by documentary evidence, that the respondent secured a loan from the Bank by pledging the Will in the year 1964 and since then the Will was kept in the bank. It is also on record that the said witness (PW2) was not cross-examined at the trial. Going by the material on record, we do not find any suspicious circumstance surrounding the genuineness of the Will.

8. Merely taking the ground that the name of appellant has also been mutated in the municipal record and thereby he acquires right in the property, cannot be given effect to in the absence of any cogent evidence in support of the claim. The record shows that prior to the addition of his name in the municipal records, when the respondent's name alone was there, the defendant—appellant had deposited the taxes in the name of plaintiff—respondent, and there was no material on record to show how the name of appellant—defendant was added in the municipal records. In our opinion, the Courts

below have thoroughly assessed the material evidences and accordingly came to the right conclusion. Once the will is believed to be a genuine piece of document, there is no need for us to delve into the matter further. In such circumstances, we do not find any reason to disturb the concurrent findings recorded by the Courts below by reasoned judgments.

9. For all the aforesaid reasons, the appeal lacks merit and is, therefore, dismissed with no order as to costs.

.....**J.**
(N.V. RAMANA)

.....**J.**
(S. ABDUL NAZEER)

**NEW DELHI,
MARCH 21, 2018.**