

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2068 OF 2010

RAJPAL SINGH

Appellant(s)

VERSUS

VIRENDRA & ORS.

Respondent(s)

O R D E R

1. Late Kanti Prasad Sharma owned a land located in Village Sainthili, Pargana and Tehsil Dadri, District Gautam Budh Nagar. After his demise on 19.05.1990, a mutation was effected in the name of his three sons on an application being filed under Section 12 of the U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as the "said Act") vide an order dated 25.06.1992.

2. The appellant being one of the son i.e. Rajpal Singh, claimed to have sold his one-third share vide a registered sale deed dated 28.06.1995 to Shivraj Singh and Laxmi Chand. After about three years, the grandsons of Kanti Prasad Sharma (Respondent Nos.1 to 5 herein) sons of his other two sons Rajender and Ram Singh (respondent Nos.6 & 7 herein), preferred an

appeal under Section 11 of the said Act claiming rights in the property on the basis of an unregistered Will dated 15.10.1984. The appeal was however dismissed by the Settlement Officer and that order was sustained right through by the Revisional court, High Court as well as before this Court.

3. After the proceedings concluded, the grandsons of late Kanti Prasad Sharma filed a probate case under Section 276 of the Indian Succession Act, 1925 before the District Judge, Ghaziabad. The probate was granted vide order dated 2.02.1998. The appellant was impleaded as one of the parties and it was claimed that he was represented by a counsel and filed his no objection to the probate.

4. The appellant filed an application for recall of the order dated 2.02.1998, *inter alia*, on the ground that it was a case of fabrication and forgery as he had never issued a no objection certificate nor had affixed his thumb impression either on Vakalatnama or on the no objection certificate. The same was pleaded *qua* service of summon. Thus, it was pleaded that a fraud has been played on the Court. This application was, however, rejected by the District and Sessions Judge vide order dated 28.02.2001.

5. The appellant proceeded to file a writ petition No.8779/2001 before the Allahabad High Court which was dismissed on the ground that he should avail the appeal remedy. The appeal then preferred by the appellant under Section 291 of the Indian Succession Act was once again dismissed on the ground of limitation and the review filed by the appellant was rejected. Hence the appeal before us.

6. On hearing learned counsel for the parties, we are of the view that it is a fit case where the application filed by the appellant for recall of the order of probate dated 2.02.1998 should be examined on merits. Our reason for saying so is that firstly there is a prior history of the mutation in which the other sons of late Kanti Prasad Sharma joined to claim the same. In the appeal proceedings arising from the mutation, the Will propounded by respondent Nos.1 to 5 before us was commented on adversely. Thus, the probate petition was filed to establish the Will through a proper legal proceedings. Secondly, and more importantly, the case of the appellant is that a fraud has been played on the court and none of the documents including the Vakalatnama, no objection

certificate or the receipt of summons bear either his signature or his thumb impression. Such controversy needs to be determined in the application after giving opportunities to the parties to lead evidence in that behalf.

7. We accordingly set aside the impugned order and remit the matter to the Additional District and Sessions, Judge, Ghaziabad, Gautam Budh Nagar to determine the application filed by the appellant for recall of the order dated 2.02.1998 on merits after giving opportunities to the parties to lead evidence. Considering the age of the dispute, we expect that Additional District & Sessions Judge would give priority to this matter.

8. The appeal is accordingly allowed. The parties to bear their own costs.

....., J.  
(SANJAY KISHAN KAUL)

....., J.  
(HEMANT GUPTA)

NEW DELHI  
MARCH 27, 2019

ITEM NO.104

COURT NO.12

SECTION III-A

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No.2068 of 2010

RAJPAL SINGH

Appellant(s)

VERSUS

VIRENDRA &amp; ORS.

Respondent(s)

(FOR EXEMPTION FROM FILING O.T. ON IA 85995/2017 )

Date : 27-03-2019 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL  
HON'BLE MR. JUSTICE HEMANT GUPTA

For Appellant(s)      Mr. S.R. Singh, Sr. Adv.  
                                 Mr. Krishna Kumar Yadav, Adv.  
                                 Mr. Avnish Singh, Adv.  
                                 Mr. Ujjawal Pandey, Adv.  
                                 Mr. Ankur Yadav, AOR

For Respondent(s)    Mr. Aditya Sharma, Adv.  
                                 Mr. Anil Kumar Sharma, Adv.  
                                 Mr. Ashok Kumar, Adv.  
                                 Mr. K. S. Rana, AOR

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

The appeal is allowed in terms of the signed order. The parties to bear their own costs.

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

(POOJA ARORA)  
COURT MASTER

(ANITA RANI AHUJA)  
COURT MASTER

(Signed order is placed on the file)