

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

OWP No.1856/2018
IA Nos.01/2018 & 02/2018

Reserved on: 24.04.2023

Pronounced on: 16.05.2023

Chand DeviPetitioner(s)

Through: Mr. Rohit Kohli, Advocate.

Vs

Sonam Choudhary Respondent(s)

Through: Mr. K. S. Johal, Sr. Advocate with
Mr. Karman Singh Johal, Advocate.

Coram:

HON'BLE MR. JUSTICE VINOD CHATTERJI KOUL, JUDGE

JUDGMENT

01. Being aggrieved of the order passed by learned Additional District Judge, Kathua (for short "Appellate Court") dismissing the appeal filed by the petitioner against the order passed by the learned Sub Judge (Chief Judicial Magistrate) Kathua (Trial Court), whereby her application under Order XXXIX Rules 1 & 2 of the Code of Civil Procedure has been dismissed, the petitioner has filed this petition under Article 227 of the Constitution of India seeking the following relief:-

“Petition u/s 104 of Constitution of Jammu & Kashmir read with Article 227 of Constitution of India against the order dated 11.08.2017 passed by the court of Ld. Sub Judge (Chief Judicial Magistrate) Kathua in File No.28/Civil Misc. in an application under Order 39 Rule 1 & 2 CPC and order dated 25.05.2018, passed by the court of learned Addl. District Judge Kathua wherein Civil 1st Misc. Appeal bearing No.78/Misc appeal titled Chand Devi Vs. Sonam Choudhary has been dismissed.

Prayer for setting aside the same.”

02. The grounds on which orders impugned have been assailed in this petition are that the orders being erroneous, contrary to law, and have been passed without appreciating the material and facts on record; that the Trial court and the Appellate Court have failed to appreciate and consider that the Will not only pertain to the property of Mst. Ram Bhaiji but also included the residential house and land appurtenant thereto which was self acquired property of late Sh. Charan Dass, the father of the petitioner; that Mst. Ram Bhaiji had no right to execute the Will with respect to the property which was situated at village Jasrota to the exclusion of the petitioner; that the orders impugned passed by the Trial Court and the Appellate Court have caused miscarriage of justice; that a grave illegality has been committed by the trial court as well as appellate court while passing orders impugned, therefore, the same are required to be set aside.

02. Heard learned counsel for the parties and perused the record.

03. Briefly stating the facts are that the petitioner/plaintiff's father namely Charan Dass had solemnized first marriage with one Chander Prabha, the mother of the applicant. Initially no issue was born out of said wedlock for a long time as such her father solemnized 2nd marriage with another lady namely Ram Bhaiji alias Ram Rakhi. Sometime after solemnization of aforesaid 2nd marriage, first wife, i.e., her mother got pregnant and gave birth to her. Non-applicant is not a daughter of Ram Bhaiji. In the Will it has been wrongly mentioned that respondent was born out of wedlock of Ram Bhaiji and Charan Dass. Respondent is not State Subject. She was brought

from Punjab by one Bulla Ram when she was small child. She does not belong to family of deceased Charan Dass. The Will has fraudulently been executed in favour of non-applicant. Ram Bhaiji was not in sound state of mind at the time of execution of Will. Ram Bhaiji was an illiterate lady and non-applicant obtained her signature on the Will by fraudulent means.

04. The learned trial court while dealing with an application held that the document, i.e., Will, was executed on 19.03.2008 and registered on 24.03.2008 before Sub Registrar, Kathua, in presence of the executant and two attesting witnesses. The endorsement of Sub Registrar shows that the executant had admitted execution of the Will when the contents of the Will were read over to her, therefore, a presumption of its due and valid execution/authenticity has to be drawn in favour of the respondent/defendant till such presumption is rebutted during the course of trial. The trial Court has while dealing with the application taken into consideration the fact that the respondent/defendant was a state subject and also the daughter of Charan Dass. The contention of the petitioner/plaintiff that the defendant/respondent was not a state subject was rejected.

05. Another contention of the petitioner was that the Will has been executed in favour of a person who was not related and Will can be executed in favour of a close relative only.

06. Will is a mode of testamentary disposition which is recognized by Section 27 of Jammu and Kashmir Hindu Succession Act 1956. It is a statutorily recognized mode of alteration of natural line of succession

delineated by Hindu Succession Act without any prohibition, curbs, rider etc.

07. The argument that the respondent was not related to the executant and, therefore, was not competent to execute the Will in her favour, is without any legal force. The documents placed on record before the Trial Court would show that the respondent/defendant was not an outsider, but she was the daughter of Charan Dass, who had two wives, one- mother of the plaintiff/petitioner and another- mother of the defendant/respondent. The trial Court while dealing with the application has taken into account each and every fact of the case as also taken into consideration the law which governs the subject, i.e., the execution of the Will etc. The Trial Court, while exercising its discretion under Order XXXIX Rules 1 & 2 CPC, has given thoughtful consideration to the rival contentions raised by the parties as also the facts of the case and has rightly exercised its discretion while deciding the application. The order of the Trial Court was challenged in an appeal. The Appellate Court considered the case and passed a well reasoned order. While going through the orders passed by the Trial Court and the First Appellate Court, the only view which could be taken is the one which has already been taken by the learned trial court and the Appellate Court. Both these orders do not suffer from any illegality and therefore, do not call for any interference by this Court.

08. On going through the orders passed by the trial Court and the appellate Court, it is clear that the trial Court while passing the order impugned has exercised its jurisdiction in accordance with law. The trial

Court has not committed any illegality nor any wrong could be found with the discretion so exercised. Similarly, the appellate court has taken into consideration all the facts and circumstances as well as the law applicable and has rightly not interfered with the discretion exercised by the trial court while dismissing the appeal and upholding the order of the trial court.

09. Powers under Article 227 of the Constitution of India to be exercised by the Court court are supervisory in nature. Such supervisory jurisdiction is exercised only where the trial court has failed to exercise its jurisdiction properly or has exercised jurisdiction not available or the orders have been passed in such a manner that could not have been passed and are not permitted by law or when jurisdiction exercised amounts to failure of justice or has occasioned in causing grave injustice.

10. In the present case, orders passed by the trial court and the appellate court do not suffer from any illegality and exercise of jurisdiction by the trial court or by the appellate court has not caused any injustice. Therefore, this petition is held to be without any merit and is, accordingly, dismissed. Interim direction, if any, shall stand vacated.

11. Copy of this judgement be sent down along with the record, if any.

(Vinod Chatterji Koul)
Judge

Jammu
16.05.2023
Narinder

Whether order is reportable?

Yes/No