

A

OM PRAKASH AND ORS.

v.

SHIV KUMAR AND ORS.

DECEMBER 6, 2006

B

[S.B. SINHA AND MARKANDEY KATJU, JJ.]

C

Evidence—Burden to prove—Execution of Will—Suit against propounders of Will alleging it to be fabricated—Dismissal of suit by trial court—Suit decreed by First and Second Appellate courts on the ground that the propounder of the Will was not able to remove suspicious circumstances surrounding the Will—On appeal, held: The burden is on the propounder of the Will to remove suspicious circumstances—This Court not to interfere with the finding of fact regarding existence of suspicious circumstances by courts below.

D

Plaintiff-respondents filed suit for possession of the land in question alleging that 'R' was owner in possession of the land and she died leaving behind the plaintiffs as only heirs; and that the appellant-defendant got a fabricated Will purporting to be prepared by 'R' and on that basis got mutation in revenue records and obtained possession. Trial Court dismissed the suit. But the First Appellate Court as well as High Court in appeal decreed the suit holding that there were suspicious circumstances surrounding the execution of the Will, and the defendants had failed to remove those suspicions, the burden to remove which was on them. Hence the present appeal.

E

F

Dismissing the appeal, the Court

G

HELD: The burden is on the propounder of the Will to remove any suspicious circumstances. There is relevant material on the record in support of the finding regarding existence of suspicious circumstances. Therefore, this Court will not interfere with the finding of fact recorded by the first appellate court and the High Court. [309-H; 310-A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1035 of 2000.

From the final Judgment and Order dated 28.5.1999 of the High Court of Himanchal Pradesh at Shimla in R.S.A. No. 99 of 1992.

H

Anant Vijay Palli, Rekha Palli and Shubra Singh for the Appellants. A

Rajesh Gupta, Harpreet Singh, Punit Dutt Tyagi and Sandeep Puri for the Respondents.

The Judgment of the Court was delivered by

MARKANDEY KATJU, J. This appeal has been filed against the impugned judgment of the Himachal Pradesh High Court dated 28.5.1999 in RSA No. 99 of 1992. B

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

The plaintiff-respondents filed a suit for possession of the land in question alleging that one Smt. Ram Ditti, widow of Data Ram was owner in possession of the said land and she died issueless in October, 1983 leaving behind the predecessor-in-interest of the plaintiffs as the only heir. It is alleged that the defendant-appellants had got a false and fabricated Will purporting to be of Smt. Ram Ditti prepared and on that basis got mutation in the revenue record with the connivance of the revenue officials and also obtained possession. D

The defendant-appellants contested the suit and it is alleged that the Will of Smt. Ram Ditti said to be executed in favour of the defendants on 29.6.1997, was a valid Will which was registered before the Sub-Registrar on 30.6.1967. E

The trial court dismissed the suit, but the first appellate court reversed that judgment and decreed the suit and the judgment of the first appellate court was upheld by the High Court. F

Both the first appellate court as well as the High Court have held that the burden was on the defendants who were the propounders of the Will to remove any suspicious circumstances, but the defendant-appellants have failed to do so. Various circumstances have been noticed by the first appellate court and the High Court in this connection and they came to the conclusion that there were suspicious circumstances surrounding the execution of the alleged Will said to have been executed by Smt. Ram Ditti, and the defendant-appellants have not been able to remove those suspicions. It is well settled in law that the burden is on the propounder of the Will to remove any suspicious circumstances. G

H

- A It is not necessary to go into all those suspicious circumstances referred to in the judgments of the High Court and the first appellate court. The finding of the High Court as well as the first appellate court is that there were suspicious circumstances surrounding the Will which is a finding of fact, and it cannot be said that this finding of fact is based on no evidence or is perverse. We have gone through the entire record and we are satisfied that
- B there is relevant material on the record in support of the said finding.

We are, therefore, not inclined to interfere with the finding of fact recorded by the first appellate court and the High Court.

- C For the reasons aforementioned, there is no merit in this appeal. The appeal is dismissed accordingly. There shall be no order as to costs.

K.K.T.

Appeal dismissed.