
(2000) 01 DEL CK 0014
In the Delhi High Court
Case No : F.A.O. No. 263 of 1998

Arjan Dev Mittra

APPELLANT

Vs

Sh. Sada Nand and Others

RESPONDENT

Date of Decision : 19-01-2000

Acts Referred:

Citation : (2000) 3 AD 129 : AIR 2000 Delhi 236 : (2000) 84 DLT 315 : (2000) 53 DRJ 715 : (2000) 3 RCR(Civil) 68

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Mr. Aman Lekhi, for the Appellant; Mr. G.N. Aggarwal, for the Respondent

Judgement

Vijender Jain, J.—Sada Nand Mittra and Laxmi Devi filed a petition u/s 276 of Indian Succession Act, 1925 for the grant of probate to them of a registered Will dated 2nd May, 1977 executed by their deceased mother Chhinko Bai, who expired on 5th May, 1986. Chhinko Bai was survived by her three sons and two daughters. Arjan Dev Mittra filed objections against the said Will before the Trial Court. Trial Court framed an issue to the following effect:-

"Whether Smt.Chhinko Bai executed a valid Will dated 2nd May, 1977 while in sound disposing mind.?"

2. The above issue was decided in favor of the respondents.

3. Aggrieved by the impugned order, the present appeal has been preferred by said Arjan Dev Mittra.

4. Mr. Aman Lekhi, learned counsel for the appellant has contended that EX. PW. 2/1 i.e. Will dated 2nd May, 1977 in view of two different inks having been used on the same Will create suspicion regarding its genuineness . He has contended that report of the hand writing expert that the ink was different at point Q4 and Q5 of Ex. PW.2/1, the Trial Court ought to have given weightage to the testimony

of hand-writing expert and could not have brushed aside the objections of the appellant.

5. Another contention of learned counsel for the appellant was that Dr. S.K. Dutta who was an attesting witness according to the propounder of the Will has as a matter of fact, certified that the Testatrix was "mentally sound" and there was no second witness in relation to Ex. PW. 2/1. What has been contended by Mr. Lekhi is that pursuant to Section 63 sub-clause (c) of Indian Succession Act, 1925 two witnesses are required to attest a Will and when there is only one witness attesting a Will, the same will not be proper Will in the eyes of law. In support of his contention he has relied on M. L. Abdul Jabbar Sahib Vs. M. V. Venkata Sastri and Sons and Others, . In this case it was held as follows:

"It is to be noticed that the word "attested", the thing to be defined occurs as part of the definition itself. To attest is to bear witness to a fact. Briefly put, the essential conditions of a valid attestation u/s 3 are: (1) two or more witnesses have seen the executant sign the instrument or have received from him a personal acknowledgment of his signature; (2) with a view of attest or to bear witness to this fact each of them has signed the instrument in the presence of the executant. It is essential that the witness should have put his signature animo attested, that is, for the purpose of attesting that he has seen the executant sign or has received from him a personal acknowledgment of his purpose, e.g. to certify that he is a scribe or an identifier or a registering officer, he is not an attesting witness."

6. Yet another argument has been advanced by learned counsel for the appellant that there was contradiction in the statement of the attesting witnesses and in that regard he has relied on the testimony of Vinod Kumar Goyal-PW. 2 and Dr. S.K. Dutta-PW. 3. He has contended that PW. 2 in his statement has stated that Chhinko Bai was accompanied by only one doctor whose name I do not remember whereas PW. 3 Dr. S.K. Dutta in his deposition has stated that he was called by PW. 2 in connection with the Will to be executed by Chhinko Devi. On the basis of the aforesaid statements, Mr. Lekhi, learned counsel for the appellant has contended that reasonable suspicion was created before the Trial Court and Trial Court ought not to have granted probate of the Will.

7. Next argument of learned counsel for the appellant with regard to the proclamation of disinheritorship issued by the deceased mother in relation of the appellant was that the respondent did not summon any person or witness from the office of Newspaper i.e. Indian Express to prove that the said notice of disinheritorship was published at the instance of Testatrix. He has also contended that the best evidence by producing original copy of Indian Express of the relevant date was also not produced before the Trial Court. In support of his contention he has cited Ram Saran Dat Vs. Emperor 1925 Lah 298.

8. Lastly, learned counsel for the appellant has contended that registration itself will not be a conclusive proof that the Will was not forged if there are

circumstances which would raise suspicion about its execution. In view of the arguments advanced before this Court, It has been contended that there was enough suspicion which was shown before the Trial Court which warranted Probate not to be granted to the respondents.

9. On the other hand, Mr. Aggarwal, learned counsel for the respondents has contended that the difference in ink on the Will Ex. PW.2/1 would not make the Will invalid or full of suspicion when the Will was executed by the Testatrix in the presence of witnesses and witnesses have signed in the presence of Testatrix. He has further contended that if any contradictory statement has been given in the testimony of PW.2 and PW.3, it has not affected either the execution, attestation or registration of Ex. PW.2/1. Mr. Aggarwal has contended that the Will was executed in the year 1977 whereas the evidence of PW.2 and PW.3 was recorded in the year 1993 and there was always chance of some minor discrepancies creeping in the deposition of witnesses if the deposition is recorded after a long gap of almost sixteen years. Mr. Aggarwal has further contended that the appellant was disinherited by the deceased mother way back in 1977 and a public notice was issued in the Indian Express. Same was also exhibited during the testimony of Naresh Sehgal who appeared as PW.6 and the newspaper was exhibited as Ex. PW.6/5. He has also contended that no specific ground has been taken by the appellant in this regard in the appeal.

10. Mr. Aggarwal has further contended that once the Will is registered then there is a presumption that the same was genuine and valid and a third party like the Sub-registrar, at the time of registration of the said Will have the Testatrix present before him as well as the witnesses who have signed after understanding the same in presence of that Sub-registrar. In support of his contention, he has cited Rabindra Nath Mukherjee and another Vs. Panchanan Banerjee (dead) by L.Rs. and others, .

11. I have given my careful considerations to arguments advanced by learned counsel for both the parties.

12. The law is well settled. Once a Will is registered, there is a presumption of its genuineness untill and unless there are very strong reasons which create doubts about its execution or it suffers from some lacuna which is provided by law for execution of a valid Will. After carefully going through testimony of PW. 2 and PW. 3 on the basis of which Mr. Lekhi has tried to argue the matter, the contradictions pointed out by him would not fall in that category. Whether doctor S.K. Dutta was called by Vinod Kumar Goyal or by Chhinko Bai would not be sufficient to establish that Will was not genuine after a lapse of sixteen years it is difficult to remember the exact details of the meeting. The testimony of both these witnesses who are attesting witnesses are in consonance with regard to the date of execution, time and place of execution, attestation as well as registration of Will. Therefore, I do not find any substance that there were certain suspicious circumstances so as to warrant Will to be declared as not genuine.

13. In Rabindra Nath Mukherjee and Another (supra) the Supreme Court held:-

"In case where a Will is registered and the Sub-registrar certifies that the same had been read over to the executor who, on doing so, admitted the contents, the fact that the witnesses to the document are interested lost significance. The documents at hand were registered and it is on record that the Sub-registrar had explained the contents to the old lady. So, we do not find the third circumstance as suspicious on the facts of the present case.

14. In the instant case also Ex. PW. 2/1 has been registered and the same has been executed in the presence of the Sub-registrar who has put his stamp on the said Will.

15. I have perused through the original Ex. PW. 2/1 on the Trial Court record. No doubt, it seems that there are two pens which have been used by the Testatrix while executing the Will but in the absence of any other motive that will not be a ground to set aside the impugned order. The appellant has tried to read too much in the words written by one of the attesting witnesses Dr. S.K. Dutta "mentally sound" before signing as an attesting witness on Ex. PW. 2/1. Merely, because one witness who happened to be a doctor has mentioned before attesting the Will that the Testatrix is mentally sound would not take that witness out of the category of witness. Although, there is no doubt with regard to the proposition of law enunciated by Mr. Lekhi but in the facts and circumstances of this case, Dr. S.K. Dutta does not cease to be a witness while mentioning mentally sound before signing. There can not be any dispute with the proposition of law Rani Purnima Devi and Another Vs. Kumar Khagendra Narayan Dev and Another 1962(3) SCC 195 but as I said earlier there are no such circumstances in the case before hand which could lead to the conclusion that the Will is not genuine.

16. Before parting I must advert to some of the consideration which went with the Trial Court while rejecting the objections of the Appellant. That was the fact that the appellant was not having good relations with the mother. A suit being No. 575/81 which was filed by the deceased mother against the appellant, as a matter of fact, was filed on 25th May, 1978 shows that there was dish-harmony between the appellant and his mother. Ex. PW. 6/5 read with the suit filed by the deceased mother against the appellant would demonstrate that the appellant was consciously dish-inherited by his mother. Even the appellant who appeared in the witness box as DW. 2 has admitted that till the time of her death, she was looking after her matters personally and she was physically and mentally fit.

"In his cross examination DW. 2 has admitted that during her life time, there was a dispute between me and my mother in respect of house No. 155, Gupta Colony Delhi".

17. In view of the aforesaid discussion, I do not see any merit in this appeal. Appeal is dismissed. Interim order stands vacated.