
(2003) 03 KAR CK 0074
In the Karnataka High Court
Case No : Misc. First Appeal No. 978 of 2001

Benedict Nazreth

APPELLANT

Vs

Lawrence Nazreth and Others

RESPONDENT

Date of Decision : 18-03-2003

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 61, 79 A

Citation : AIR 2003 Kar 369 : (2003) 2 KCCR 1527

Hon'ble Judges : S.B. Majage, J

Bench : Single Bench

Advocate : Sarat Chandra Bajai, for the Appellant; B.V. Krishna, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Majage, J.—This appeal is filed by the appellant, who was 5th defendant in O.S. No. 24/1997 on the file of the Court of 3rd/Additional District Judge at Mangalore challenging the Judgment and decree passed therein in favour of respondents 1 and 2 who were the plaintiffs.

2. For the sake of convenience, the parties will be referred hereafter as shown in the impugned Judgment and decree i.e., as plaintiffs and defendants.

3. Brief facts, that gave rise to the present appeal, are : that plaintiffs filed an application registered as P and SC No. 124/96 requesting for grant of letters of administration in respect of properties left by their father viz., deceased late Pabian Bastam Nazreth. Defendant No. 5 contested the matter disputing the execution of the Will deed by deceased. So, converted the said proceedings as original suit and registered as O. S. No. 24/1997 on the file of the trial Court. It is the case of the plaintiffs that they and defendant No. 5 are the sons whereas, defendants 1 to 4 and 6 are daughters of Pabian Bastam Nazareth and Carmin Nobia Nazareth, and said Pabian Eastern Nazareth was conferred with occupancy rights in respect of 3 Sy. Nos. of Shriya Village in the year 1977 and made will

dated 6-7-1982 while in a sound disposing state of mind and later he died on 30-9-1986 and consequently, on 6-12-1996, they applied for letters of administration, but the proceedings were converged into original suit, as noted already with reliefs claimed therein.

The defendants, other than defendant No. 5, have not contested the proceedings. Defendant No. 5 contended that the deceased was not in sound disposing state of mind When the Will alleged was made and the deceased had no right to execute such Will under the Karnataka Land Reforms Act and consequently, in the circumstances, the plaintiffs cannot derive any benefit out of such a Will, which came into existence under suspicious circumstances, that too, under the undue influence of the 2nd plaintiff when the deceased was in intoxicated condition and as such requested to reject the request of the plaintiffs.

After trial, the trial Court negated the contentions taken by defendant No. 5 and consequently, decreed the suit of the plaintiffs and ordered to issue letters of administration. It is against the said Judgment and decree, defendant No. 5 has filed the present appeal.

4. The main grounds of attack for him are that the execution of Will by the deceased in sound disposing state of mind has not been proved and, in fact, the Will had come into existence under suspicious circumstance and that the deceased was a drunkard and under the influence of the 2nd plaintiff and that under the Karnataka Land Reforms Act, the deceased could not have made such a Will in favour of plaintiffs and consequently, requested to set aside the judgment and decree and dismiss the suit of the plaintiffs.

5. Heard the learned counsel for the parties and perused the records of the Court below carefully.

6. The points, which arise for consideration in the matter, are :

1) Whether the Will dated 6-7-1982 was made by the deceased in sound disposing state of mind ?

2) Whether the Will is free from suspicious circumstances to act on it ?

3) Whether the Will was hit by the provisions contained in Karnataka Land Reforms Act?

7. Point No. 1: It is vehemently argued that the evidence adduced, including the letters produced, besides photos marked show that the deceased was a drunkard and he was not in a condition to understand, to put it in other words, he was not in a sound disposing state of mind when he signed the Will, though the execution of the document by the deceased is not seriously disputed. It is true that oral evidence is tried to be brought on record to show that the deceased was taking drinks. However, from that fact only, it cannot be said and held that the deceased was not in a sound disposing state of mind, when there is nothing on record to show that he was in drunken state at the time when the Will was made. Simply

because the deceased was in the habit of taking drinks, as has been brought on record by defendant No. 5 or, that he was taking drinks heavily or, that he was taking drinks with the money, which the plaintiffs used to send, they cannot be the grounds to hold that the deceased was drunk at the time of making Will or, that he was not in a condition at that time to understand as to which document he was signing. So, the fact that the deceased was taking drinks or addicted to drinks is of no help to defendant No. 5.

8. For the undue influence pleaded by defendant No. 5, firstly, there are no particulars as required under law though, for undue influence, necessary particulars are required to be furnished in pleadings. Further, it may be noted that undue influence is sought to be made out on the basis of giving money by plaintiff No. 2 to the deceased. If, due to necessity or otherwise, the deceased was receiving amount from plaintiff No. 2, that cannot be taken to hold that the 2nd plaintiff had used undue influence on the deceased to make Will. It was contended that on account of giving money by plaintiff No. 2 (to the deceased), the 2nd plaintiff was in a position to dominate the deceased and in that way, it can be said that he had influenced the deceased to make Will. To hold so, will be extending the scope or purview of influence to such an extent, which is neither permissible nor proper under any circumstance. May be for the reason that plaintiff No. 2 was sending money to the deceased, the deceased might have made up his mind to make a Will to give share in his properties to plaintiff No. 2 along with plaintiff No. 1, but it cannot be taken that undue influence or influence was used by plaintiff No. 2 or, that plaintiff No. 2 dominated or influenced the mind of deceased in making Will.

9. As noted already, execution of the document (of Will) has not been seriously disputed. Even otherwise, there is evidence of attesting witness, who is no other than the brother-in-law of defendant No. 5 and plaintiffs. So, rightly the learned counsel for defendant No. 5 did not press the said point.

10. Similarly the fact that plaintiff No. 2 is a rich person and as such he could influence the deceased to make a Will in his favour, cannot be accepted to say that the deceased was not in a sound state of mind at the time of execution of the Will, moreso, when the Will is in favour of plaintiff No. 1 also and not in favour of second plaintiff only. Of course, it is submitted that plaintiff No. 1 being deaf and dumb is not in a position to enjoy the properties even if the properties go to him and virtually, it will be the 2nd plaintiff, who will enjoy the proper ties absolutely and hence, this aspect of the matter also cannot be ignored. It is true that the first plaintiff is deaf and dumb, as has come on record. At the same time, it has come on record that he has his wife and children as well. Further, there is nothing on record to show that on account of his deafness and/or dumbness, he is not in a position to take care of his interest and that he is depending on plaintiff No. 2 only. In this view of the matter, even the said point urged for defendant No. 5 does not help him much. So, point No. 1 is answered in affirmative.

11. Point No. 2 So far as suspicious circumstances are concerned, according to defendant No. 5, there was no reason for the deceased, i.e., his father to exclude him from giving any share or right in the lands and to give the same absolutely to the plaintiffs only, that too, without giving any right or interest to defendants 1 to 4 and 6 also.

12. It is also the case of defendant No. 5 that he was in good terms with the deceased and was not acting against his desires, so, mention made in the Will deed that he was not in good terms and acting against the wishes of deceased cannot be believed or accepted. In this regard, reliance was placed on the letters written by the deceased at Exs. D 4 to 8 particularly in the light of other letters at Exs. D-9 to 12 written by his sisters asking him to take care of the deceased, who was said to be taking more drinks. It is true that the trial Court has not considered the said letters, as rightly submitted for defendant No. 5. At the same time, it may be noted, that the plaintiffs do not admit the said letters as letters written by their deceased father and/or by sisters and specifically suggested that the said letters were not written by them and they are concocted. Of course, defendant No. 5 could not have examined his father (who is dead) in order to prove the letters Exs. D-5 to D-8, but he could have produced some other records or letter available with him, to show that in fact the said letters in question were written by his father. It is not that the letters at Exs. D-5 to 8 were the only letters available with him. Further, he could have examined his sisters. It is not that said letters were the only letters, but, according to him, there are other letters and records also, which have not been produced in the case for the reasons best known to him. It is not the case or evidence of defendant No. 5 that his sisters are not in good terms or talking terms with him. Had it been so, their non examination would not have been of much consequence. So in the circumstances, when the genuineness of the letters was challenged, the contention of defendant No. 5 that he was in good terms with his father and on account of that, letters were written to him by his father or by his sisters can't be accepted. At the most, the said letters show that he was not in bad terms with the deceased father and nothing more. Even otherwise, that itself cannot come to the help of defendant No. 5.

13. It has come on record that defendant No. 5 has changed his course of life from time to time and did not stick on to one profession or one way of life. This is clear from his deposition itself, which cannot be disputed. It is also not that defendant No. 5 is not having any source of income and as such, his father was required to take care of him since he was not in bad terms with the deceased. On the other hand, para 4 of the will deed shows that defendant No. 5 was found well off in good profession at Bombay. So, even if ignored the requital found therein that he was acting against the wishes of the deceased, that will not help defendant No. 5 much. At any rate, it is not the case or evidence of defendant No. 5 that he was supporting his father and not plaintiff No. 2 or plaintiff No. 1. On the other hand, admittedly, the deceased was staying with plaintiff No. 1 and, plaintiff No. 2, residing at Bombay, was sending money to the deceased. Of

course, plaintiff No. 2 is not yet married, but that cannot be taken to hold that there was no reason for the deceased to make will in favour of plaintiff No. 2 along with plaintiff No. 1 and exclude defendant No. 5.

14. It is the bone of contention of defendant No. 5 that the daughters were also not given any share or interest in the lands and even one of the three sons has been totally excluded by the testator and as such, in the circumstances, it can be said that the will is shrouded with suspicion. In the case of *S. Sundaresa Pai and Others Vs. Sumangala T. Pai and Another*, when similar question came up before the Supreme Court recently, the Supreme Court has observed as under :--

"5. The main reason, which weighed with the High Court for its conclusion that the Will was unnatural was uneven distribution of the assets by Indira Bai and also that the will did not give anything to the widowed daughter. According to the High Court this daughter was "perhaps more deserving".

6. It is significant to note that only the plaintiff has questioned the Will. All the defendants were supporting the will. The High Court also found that in view of the testimony of the attesting witness, the will has been formally proved. Under these circumstances, we fail to understand how the conclusion about the will being unnatural on the basis of uneven distribution of the assets by Indira Bai could be reached. The widowed daughter had not questioned the Will. She rather supported it. Therefore, it could not be taken as a circumstance to show that the Will was unnatural by observing that she was more deserving. It is a question which lies squarely within the pure discretion of the executant of the will. The finding that the "Will is most unnatural" cannot be sustained.

7. Learned counsel for plaintiff Respondent 1, supporting the impugned judgment also laid strong emphasis on uneven distribution of the assets which according to him, shows the suspicious circumstances in respect of the execution of the Will. The uneven distribution of assets amongst children, by itself, cannot be taken as a circumstance causing suspicion surrounding the execution of the Will. One son was given bulk of immovable property; other half being given to the plaintiff and another daughter and husband were given nothing. It is also not in dispute that some properties were given in gift to the plaintiff by her mother during her lifetime. There was nothing unnatural."

In the case on hand also, except defendant No. 5, no other son or daughter of the deceased contested or opposed the claim of the plaintiff claimed on the will deed. The deceased gave his landed properties to his deaf and dumb son and also to an unmarried son. who were either taking care or assisting him in his life, and excluded the daughters completely besides a son for the reasons mentioned in the Will. The will was made in the presence of son-in-law of the testator, i.e., one of the brother-in-laws of plaintiffs and defendant No. 5. It has already been held that the Will was made by the testator in sound disposing state of mind, Simply because defendant No. 5 and his sisters (other defnts.) were excluded totally, the Will cannot be taken as surrounded by suspicious circumstances even

if assumed that he was in good terms with the deceased because, invariably, every Will effects the rights of one or the other, who claims right to property of testator through such testator and as such, that itself can't be a circumstance to doubt the will.

15. Incidentally it may also be noted that plaintiff No. 2 was not present at the time of making Will or at the time of its registration. It is not that plaintiff No. 2 alone is a beneficiary under the Will. He was in Bombay at that time and it is not the case of defendant No. 5 that plaintiff No. 2 was with the deceased when Will was made. So, by remaining present at the time of Will, dominating or influencing the deceased to make a Will in his favour also does not arise. Thus, none of the grounds urged to show that the will came into existence under suspicious circumstances, is acceptable and as such point No. 2 is also answered in negative.

16. POINT No. 3 : It is the case of defendant No. 5 that the deceased could not have made will of the lands, for which he was given occupancy rights. In this connection Section 61 of the Karnataka Land Reforms Act was relied on. The Trial Court considering the decision of the Supreme Court in the case of Sri Sangappa Kalyanappa Bangi (D) Through Lrs. Vs. Land Tribunal, Jamkhandi and Others, answered the said point in favour of plaintiffs and against defendant No. 5 holding that such a Will could be made in favour of sons, though not in favour of a stranger to the family. Of course, reliance was sought to be placed on Section 79A of the said Act to show that lands could not have been given to plaintiff No. 2 who is a non-agriculturist. For this, it may be noted that absolutely there is no pleading by defendant No. 5 and, on account of that, no evidence was adduced by the parties and as such, at this stage, such a plea cannot be gone into. Even otherwise, there is nothing on record to show that the requirements of the said provision of law have been fulfilled to invoke it and say that plaintiff No. 2 comes within the category of persons, who are prohibited under that Section to have the said lands. So, even point No. 3 also requires to be answered in favour of the plaintiffs and against defendant No. 5 appellant.

No other point has been canvassed nor raised before this Court.

In the result, the appeal is dismissed. However, parties are directed to bear their respective costs.