
(1987) 08 P&H CK 0019
In the Punjab And Haryana At Chandigarh
Case No : Probate No. 4 of 1986

Bhagat Ram

APPELLANT

Vs

Bhagat Ram and Others

RESPONDENT

Date of Decision : 12-08-1987

Acts Referred:

Succession Act, 1925 — Section 276

Citation : (1987) 08 P&H CK 0019

Hon'ble Judges : J.V. Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

J.V. Gupta, J.—Bhagat Ram son of late Ram Dhari Mal filed this petition u/s 276 of the Indian Succession Act for the grant of probate of the will date 6.2.1978 executed by his father Ram Dhari Mal son of Bicha Lal, who died on 8.5.1978. At that time, the deceased left behind three sons Bhagat Ram, Shiv Narain and Sat Pal, daughter Pisto Devi and widow Shanti Devi, son of late Ram Dhari Mal. The daughter and the widow did not come forward to contest the same. However, the widow Shanti Devi died during the pendency of this petition. In the written statement filed on behalf of the said Respondents, they denied that any will was executed by Ram Dhari Mal, their father, on 6.2.1978. According to them the said will (Ext.P1) has come into light for the first time in 1986. Both the attesting witnesses are the near relations of Bhagat Ram Petitioner. The will does not bear the signatures of Ram Dhari Mal and is otherwise also surrounded by suspicious circumstances. It was also pleaded that all the property in the hands of Ram Dhari Mal was joint Hindu family property and his estates were ancestral and form coparcenary property. Thus, he was not competent to make a will regarding that property.

2. On the pleadings of the parties, the following issues were framed-

(1) Whether Ram Dhari Mal deceased had executed a valid will dated 6th

February, 1978?

(2) Whether the properties bequeathed under the will were coparcenary? If so, its effect?

3. In order to prove the execution of the will, the Petitioner Bhagat Ram produced both the marginal witnesses Radhey Shyam Singhal PW2 and Jai Bhagwan Goel PW3. He himself appeared as PW1. In rebuttal, Shiv Narain Respondent appeared as DW1 and he also produced one Rulia Ram as DW2 and Baij Nath as DW3. In support of issue No. 2, the Respondents produced one Piare Lal Garg. And this is the entire evidence on the record.

As regards the execution of the will, it has been duly proved by both the attesting witnesses Radhey Shyam PW2 and Jai Bhagwan PW3. Radhey Shyam PW2 stated that the will Ext.P1 bears his signatures as an attesting witness, that Ram Dhari Mal signed the will in his presence and that he put his signatures on the will after Ram Dhari Mal had put his signatures on it. Jai Bhagwan Goel PW3 also signed the will in his presence as well as in the presence of Ram Dhari Mal. Similar is the statement of Jai Bhagwan Goel PW3 who stated that the will Ext.P1 bears his signatures and that the will was read over to Ram Dhari Mal and his son in his presence. He also signed the will in the presence of Ram Dhari Mal who was in a sound disposing mind at the time of executing the will. The only criticism made on behalf of the Respondents is that both these attesting witnesses were related to Bhagat Ram Petitioner and, therefore, they could not be believed. In this behalf, the statement of Shiv Narain DW1 is very significant. He stated that to his knowledge Ram Dhari Mal did not execute any will nor any such will was ever shown to them at the time of Kirya ceremony. But, in cross-examination stated:

I got a shop under the will and a house. We did not get any share in the agricultural land. The residential house given to us under the will is situated in village Urdana. The said house has been sold by us as the same was in our name.

4. The other Respondent Sat Pal did not appear in the witness-box to support Shiv Narain. Thus it is admitted that both the sons also got property under the will and, not only that, the house which they got under the will was sold by them also. To say that it was already in their name and they did not get the same under the will is meaningless in the absence of any evidence. Under the will Ext.P1, all the heirs of the deceased were given some property. The daughter Smt. Pisto Devi was not given any property as it was stated that she was already married. Smt. Shanti Devi, the widow, was given a right of residence during her lifetime but no right of disposition of the property was given to her. One residential house situated at village Urdana and one shop at Asand Mandi were given to both the sons, namely, Shiv Narain and Sat Pal, who were from the second wife Smt. Shanti Devi.

5. According to the learned Counsel for the Respondents, the will was surrounded by suspicious circumstances. The very fact that, according to the learned

Counsel, there was unequal distribution of properties between the heirs of the deceased was itself sufficient to doubt the genuineness of the will. He also points out that Bhagat Ram petition and his son took active part in getting the will executed and, therefore, it was not a genuine one. In support of his contention, he referred to Gorantla Thataiah Vs. Thotakura Venkata Subbaiah and Others, , Ramchandra Rambux Vs. Champabai and Others,

6. As observed earlier, taking into consideration the facts and circumstances of the case and the evidence on the record, the execution of the will Ext.P1 is duly proved by the two attesting witnesses. The so called suspicious circumstances are imaginary. If all the heirs were to get equally, then there was no necessity of executing the will. Not only that, Shiv Narain DW1 admitted in his cross-examination that they got a shop and a house under the will and subsequently sold the said house. That being the situation, having taken the benefit under the will, the Respondents could not urge that there was no valid will Ext.P1 executed by the father Ram Dhari Mal. Therefore, issue No. 1 is decided in favour of the Petitioner and against the Respondents.

7. No argument was raised on issue No. 2 nor is there any evidence to prove that the property was coparcenary. This issue is, therefore, decided against the Respondents.

8. Consequently, the petition succeeds and is allowed with costs. The necessary probate be issued in accordance with the Rules.