

(2003) 10 SHI CK 0005

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 159 of 2003

Kartar Chand and Others

APPELLANT

Vs

Mathura Dass and Others

RESPONDENT

Date of Decision : 31-10-2003

Acts Referred:

Citation : (2004) 1 ShimLC 36

Hon'ble Judges : Kuldip Chand Sood, J

Bench : Single Bench

Advocate : Jagdish Rajta and Rakesh Sharma, for the Appellant; K.D. Sood, for the Respondent

Final Decision : Dismissed

Judgement

Kuldip Chand Sood, J.—The question raised in this second appeal is whether the Will set up by the Respondents is a forged document and surrounded by suspicious circumstances which makes the execution of the Will improbable.

2. It appears, the suit property was owned and possessed by one Krishni Devi. The Plaintiffs filed a suit for possession of the property saying that the Defendants were in possession of the property, on the basis of a forged Will and one Janki Devi being the only heir was entitled to inherit the property of Krishni Devi. The Defendants resisted the suit and pleaded that they served the deceased Krishni Devi who executed the Will in their favour of her own volition in sound and disposing state of mind.

3. Learned trial Court on the appraisal of the evidence found that Krishni Devi was admitted in the hospital immediately before the execution of the Will and allegedly executed the Will next day which circumstance is a suspicious circumstance. Learned trial Judge observed that Krishni Devi was not physically and mentally sound and was not in a position to execute the Will on 23rd April, 1986. Therefore, the Will cannot be held to be a genuine document.

4. Learned first appellate Court on reappraisal of the evidence concluded that the

Will set up by the Defendants was a genuine document and is not visited by any suspicious circumstance. The judgment of the trial Court was set aside and the Will was held to be a valid document.

5. Aggrieved, the successor-in-interest of Janki Devi are in this second appeal.

6. I have heard learned counsel for the parties and perused the record.

7. Learned Counsel for the Appellants strenuously urges that the Will suffers from suspicious circumstances and, therefore, cannot be said to be a valid document. Learned Counsel strenuously urges that the testatrix was of advanced age, suffering from tuberculosis and was admitted in the hospital immediately before the execution of the Will which makes the Will, set up by the Defendants, suspicious. There is no dispute that the testatrix was being looked after by the Defendants and it were Defendants who admitted her in the hospital. Merely because the testatrix was of advanced age and physically unwell would not lead to the conclusion that she was not of sound disposing state of mind.

8. This Court in *Smt. Leela alias Bali Devi v. Smt. Drumti Devi* 2000(2) S.L.J. 1722, took a view that validity of a Will depends on the testator being of sound disposing mind at the time making of the Will and not on his advanced age. Mere fact that a person is of an advanced age does not lead to the presumption that such person is not of sound disposing mind.

9. The other arguments raised by the learned Counsel for the appellants is that the beneficiary took the testatrix to the Sub Registrar and thus influenced the will of the testatrix. To say least the argument without any merit. It is now well settled that presence of the beneficiary at the time of the execution of the Will or such beneficiary accompanying the testator for the execution of a will, would not show that undue influence was exercised by the beneficiary in the execution of the will.

10. This Court in *Smt. Leela alias Bali Devi (supra)* relying upon *Tirath Singh and Ors. v. Sajjan Singh (Died)* through his L. Rs. and Ors. 1998(1) S.L.J. 232 and *Gun Parkash and Another Vs. Bhola Nath*, held that the fact that the beneficiary accompanying the testator for the execution of a Will, would not show that undue influence was exercised by the beneficiary in the execution of the Will. The presence of the family members of the beneficiary in itself will not make the Will suspicious unless something more than that is established. Simply because the testatrix was an old lady, suffering from tuberculosis and the fact that her natural heirs were deprived in itself will not be suspicious circumstance to discard the Will.

11. Be it noticed that no evidence was led by the Appellants so far the question of forgery of the Will is concerned.

12. No question of law much less substantial question of law arises in this appeal. Dismissed.

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13. No order, in view of the order passed in the main appeal. The application is disposed of.