
(2010) 12 DEL CK 0011
In the Delhi High Court
Case No : FAO. No. 269 of 1995

Mahinder Pal Gupta and Another

APPELLANT

Vs

Narender Pal Mahajan and Others

RESPONDENT

Date of Decision : 13-12-2010

Acts Referred:

Evidence Act, 1872 — Section 68, 69, 70, 71, 72
Succession Act, 1925 — Section 63

Citation : (2011) 1 AD 334

Hon'ble Judges : Mool Chand Garg, J

Bench : Single Bench

Advocate : Rajat Katyal, for R1 and 2, for the Appellant; Rajinder Arya, for the Respondent

Final Decision : Dismissed

Judgement

Mool Chand Garg, J.—The appellants are aggrieved of the judgment delivered by the learned ADJ in Probate Case No. 66/1995 whereby the learned ADJ has granted probate on the Will left by Late Sh. Raghubir Dass Mahajan (hereinafter referred to as "the testator") dated 14.11.1985 which was duly registered in the office of Sub Registrar, Kashmere Gate, Delhi in favour of the respondents, namely, Sh. Narender Pal Mahajan, Sh. Rajender Pal Gupta, Smt. Manorma Mahajan. The testator expired on 14.03.1997 and on the date of his death, he left behind him besides the appellants, his two daughters namely Smt. Manorama Mahajan, Ms. Santosh Kumari Mahajan and a son Sh. Mahinder Pal Gupta, who is appellant No. 1 in this case. By way of the Will in question the deceased bequeathed the built up property bearing No. 11/32, Subhash Nagar, New Delhi in favour of two sons but excluded his other children namely Smt. Manorama Mahajan, Ms. Santosh Kumari and Sh. Mohinder Pal Mahajan. The other two sons being the beneficiary under the Will applied for the grant of probate in respect of the estate left by the deceased father.

2. After notice of the petition was ordered to be served upon the appellant and

other relatives whose names were mentioned in Schedule-B annexed with the petition and citations were issued to the general public, one of the daughters of the deceased, namely, Smt. Manorama Mahajan gave no objection while the other two children, namely, Mahinder Pal Gupta and Ms. Santosh Kumari who are the appellants in this Court filed objections to the grant of probate of the Will and raised various objections. This appeal was dismissed in limine by a predecessor of this Court vide order dated 02.02.1996. However, after the appellant approached the Supreme Court, the matter was remanded back to this Court vide order dated 02.09.1996 passed in Civil Appeal No. 11467/1996 titled as Mahinder Pal Gupta and Anr. v. Narender Pal Mahajan and Ors. with a direction to hear the matter afresh and to decide the appeal on merits.

3. In view of the aforesaid directions of the Supreme Court, the matter has been re-heard on merits. According to the appellants, the Will dated 14.11.1985 is a forged and fabricated document. It does not bear the signatures of their deceased father, Sh. Raghubir Dass Mahajan. It is further stated that the deceased was not having sound and disposing condition either on 14.11.1985 or on 27.12.1985 i.e. on the date when the Will is alleged to have been executed and the date when the Will was registered. It is also pleaded that the deceased had lost one eye in his young age and his other eye was also defective due to chronic ulcer. It was stated that it was impossible for the testator to have executed the Will in question and presented the same for registration before the Sub-registrar. It was alleged that the Will was a result of criminal conspiracy between the petitioners and the attesting witnesses who are closely related to each other and, therefore, it was prayed that the probate petition be dismissed.

4. The learned ADJ has framed the following issues:

1. Whether Late Sh. Raghubir Dass Mahajan executed a valid Will dated 14-11-1985 while in sound and disposing mind?

2. Relief?

5. Parties led evidence. The beneficiaries, namely, Sh. Narender Pal Mahajan, (R-2) and Sh. Rajender Pal Gupta (R-3) examined two attesting witnesses, namely, Sh. Man Singh Bhardwaj and Sh. Suraj Prakash Gupta PW2 and PW3 respectively to prove the execution and attestation of the Will. Sh. Narender Pal Mahajan, himself appeared as his own witness as PW-1. On the other hand from the side of the objectors, Sh. Charanjit Singh appeared as RW-1, Sh. Dhara Singh, UDC from L&DO Office appeared as RW-3. The objector, Sh. Mahinder Pal Gupta himself appeared as RW-3.

6. The learned ADJ vide the impugned order decided issue No. 1 in favour of the beneficiaries and held that the objectors were not able to prove any of the suspicious circumstances with regard to the execution and attestation of the Will. It was stated that the testimony of the two attesting witnesses goes to show that the Will was executed by the deceased testator in their presents and they signed the Will in the presence of the testator and in presence of each of them and

therefore, the execution and attestation of the Will was in accordance with the provisions contained in Section 63(c) of the Indian Succession Act and as well as the provisions contained under Sections 68 - 72 of the Evidence Act. It would be appropriate to take note of the aforesaid provisions, which read as under:

The Indian Succession Act, 1925

63. Execution of unprivileged Wills.- Every testator, not being a soldier employed in an expedition or engaged in actual warfare, [or an airman so employed or engaged,] or a mariner at sea, shall execute his Will according to the following rules:-

(a) The testator shall sign or shall affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction.

(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a Will.

(c) The Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgement of his signature or mark, or of the signature of such other person; and each of the witnesses shall sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

The Indian Evidence Act, 1872

68-Proof of execution of document required by law to be attested.- If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:

[Provided that it shall be necessary to call an attesting witness in proof of the execution of any document, not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.]

69. Proof where no attesting witness found.- If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the documents is in the handwriting of that person.

70. Admission of execution by party to attested document.- The admission of a party to an attested document of its execution by himself shall be sufficient proof

of its execution as against him, though it be a document required by law to be attested.

71. Proof when attesting witness denies the execution.- If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence

72. Proof of document not required by law to be attested.- An attesting document not required by law to be attested may be proved as if it was unattested.

7. Thus, it will be seen that to prove the execution and attestation of the Will by deceased testatrix it is required to be proved that the testator signed or thumb marked the Will in the presence of the witnesses and each of them signed the Will in presence of the testator and in presence of each of them while the testator was possessed of sound and disposing mind. It should be established that at the time of the disposition the testator had sufficient memory and intelligence to form a proper judgment regarding it and should have freely decided to make it.

8. Referring to the statement made by PW-1, Sh. Narender Pal Mahajan who is also a beneficiary of the Will, it has been observed that on oath he has deposed that his father Sh. Raghubir Dass Mahajan died on 13.03.1987. He proved his death certificate Ex.PA and it is stated by him that his father had handed over his Will to him in February, 1987 before his death. He identified the signatures of his father in Urdu and in English on the Will mark A. He stated that the signatures of his deceased father appear on the Will mark A at point X1 and X-8. It is further deposed by him that his father was keeping good health and was mentally sound at the time of execution of the Will in November, 85. No suggestion has been given to PW-1 Sh. Narinder Pal Mahajan to suggest that the Will mark A does not bear the signature of the testator at points X-1 to X-8 as deposed by the petitioner No. 1(PW-1) in his examination-in-chief.

9. By referring to the statement made by PW-2 Sh. Man Singh Bhardwaj, it has been observed that on oath, he stated that he knew Raghubir Dass Mahajan for about 25 years before his death. Mr. Bhardwaj further stated that on 14.11.1985, he had gone to the house of the deceased Sh. Raghubir Dass Mahajan where Sh. Rajinder Arya, Advocate and one Sh. Suraj Prakash Gupta were already present in the house of Sh. Raghubir Dass Mahajan, On that day he was shown the Will mark A by the deceased Sh. Raghubir Dass Mahajan which was read over and explained to the testator by Sh. Rajinder Arya, Advocate. It is further deposed by PW-2 Sh. Bhardwaj that the deceased testator after accepting the contents of his Will to be correct, put his signatures in English and in Urdu on Will Ex. PB in his presence and also in the presence of other attesting witnesses. Sh. Suraj Prakash Gupta and Sh. Rajinder Arya, Adv. PW-2 further stated that after the testator put his signatures on the Will Ex. P1, he also signed on the said Will at the same time and in the presence of Sh. Raghubir Dass Mahajan, Sh. Suraj

Praksh Gupta and Sh. Rajinder Arya, Adv. Sh. Suraj Parkash Gupta who was also there at the house of the deceased testator signed the Will Ex. PB in his presence and also in the presence of Sh. Raghubir Dass Mahajan, Sh. Suraj Parkash Gupta who was also there at the house of the deceased testator signed the Will Ex. PB in his presence and also in the presence of testator and Sh. Rajinder Arya, Adv. PW-2, Mr. Bhardwaj identified the signatures of the deceased testator Sh. Raghubir Dass Mahajan on the Will Ex.PB at point X-1, X-2 and X-5 to X-8. He stated that his signatures on Will mark PB are at points Y1 to Y3 and that of Sh. Suraj Parkash Gupta is at points Z-1 to Z-3. It is deposed by Mr. Bhardwaj that the testator as well as both the attesting witnesses including himself had signed the Will on the same date i.e. on 14.11.85 in presence of each other. He also identified the signatures of Sh. Rajinder Arya, Adv. at point Z-4 on the Will Ex.PB. This gentleman has also deposed that the testator was in sound state of health at the time of executing his will. He further stated that after the testator had executed the Will, Ex.PB, he along with testator and Shri Suraj Parkash Gupta and Shri Rajinder Arya, Adv. went to the office of Sub-Registrar for registration of the said Will where the said Will was got registered. The testator had signed the Will Ex.PB at points X-3 and X-4 before the Sub-Registrar. PW-2, Mr. Bhardwaj signed the Will at mark Y-4 and Shri Suraj Parkash Gupta signed the Will at point Z-5 before the Sub Registrar .Other attesting witnesses, PW-3 Shri Suraj Parkash Gupta, who has been examined by the propounders of the Will has also identified the signatures of the testator as well as his own signatures and the signatures of Shri Bhardwaj on Will Ex.PB. It is deposed by PW-3 Shri Suraj Parkash Gupta that he also signed the Will Ex.PB as an attesting witness in presence of the testator and PW-2 Shri Bhardwaj and that they all had signed in presence of each other.

10. It is, however, interesting to note that despite this being the case of the appellants that the Will was a forged and fabricated document, they had not given any suggestion to the attesting witnesses or to respondent No. 1, who appeared as PW-2 that the Will in question was a forged document. He also gave no suggestion that somebody else has personated as the deceased testator by putting his signatures on the Will Ex.PB. Even though the appellants examined one Charanjit Singh as RW-1 to falsify the statement of the witnesses examined by the beneficiaries, even though the said witnesses deposed that he knew the deceased testator for about 25 years and was a neighbor and had also seen the testator signing the documents, and that the Will Ex.PB was not bearing signatures of the testator, Sh. R.D. Mahajan. In his crossexamination, he stated that he had seen the signatures of the deceased casually and saw him signing only once or twice and that was 7-8 years back. RW-1, could not tell how many sons or daughters the deceased had. There are also no suggestions as to the incapacity of the testator only on account of there being a defect in one of his eye sight while he being blind by one eye.

11. The learned ADJ, therefore, rightly observed that no credence could be given to the statement of Charanjit Singh so as to bely the deposition of the attesting

witnesses. Moreover, one of the witnesses produced by the appellants, Sh. Mahinder Pal Gupta, RW-2 has also admitted that one of the attesting witnesses, namely, Sh. Suraj Prakash Gupta was a common relative of the parties being their brother-in-law i.e. the husband of their cousin sister. The learned ADJ has observed that no reasons have been given by the appellants either in their objections or in the cross-examination of the petitioner or even in their own testimony as to why PW-3, Sh. Suraj Prakash Gupta has deposed against them. The learned ADJ has also observed that there is no dispute with regard to the registration of the Will which itself gives credence, validity and authenticity about the Will in question.

12. Another objection that the Will was not containing the signatures of the deceased testator as taken by the appellants has also been considered by the learned ADJ in para-15 of the impugned order. The observations made in the other paragraphs which are very relevant are reproduced hereunder:

15. It has been vehemently argued by Mr. malhotra, learned Counsel for the objectors that the signatures of the testator on Will Ex.PB does not tally with his signatures on the documents produced by RW-3 Shri Dhara Singh, an official from L&DO office. RW-3 Shri Dhara Singh on directions of the court has tendered in evidence two original letters dated 21.05.69 and 30.06.69 and copy of a lease deed dated 19.12.68 purported to be bearing the signatures of the deceased, Shri Raghubir Dass Mahajan. Although, objectors have disputed the signatures of the testator on Will Ex.PB with his purported signatures on the documents produced by RW-3 an official from L&DO office but they have not produced any expert opinion to prove their contention that signatures on Will Ex.PB are not that of the deceased. It would be recalled that the objectors have not suggested either to petitioner No. 1 (PW-1) or to any of the two attesting witnesses (PW-2 and PW-3) that somebody else had impersonated as Raghubir Dass Mahajan and that the signatures on the said Will purported to be his signatures were appended by someone else. It would further be recalled that all the three PWs have categorically stated in their statement that the Will Ex.PB bear the signatures of the deceased testator at points X-1 to X-8. It appears that the objectors have admitted the said statement of the petitioner's witnesses to be correct and therefore, they have not cross-examined any of the petitioner's witnesses on the point of the signature of the deceased. However, I, myself have examined the general characteristic and formation of letters in the signatures of the deceased on Will Ex.PB with that of his purported admitted signatures on documents produced by RW-3, Shri Dhara Singh and official from L&DO office and on comparison of his signatures on two sets of documents, I find that the style of formation of letters and the general characteristic of the signatures of the deceased to be common in both the said sets of documents. Thus, I am of the considered opinion that the Will Ex.PB bears the signatures of the deceased at various places and there can be no manner of doubt in this regard. I do not find any merit in the arguments of learned Counsel for the objectors that the Will has been forged by the petitioners.

13. The negligence or an intentional act on the part of the appellants having not put any suggestion to the witnesses examined on behalf of the beneficiaries regarding the signatures of the deceased testator being not that of the testator and the comparison of the signatures made by the learned ADJ himself along with admitted signatures on the Will in question and having found the same to be that of the testator leaves no room for doubt on the issue that the Will was signed by the testator. 14. As far as the argument addressed on behalf of the appellants that it was highly unnatural and improbable to exclude the unfortunate daughter, who was deserted by her husband from inheritance from the estate left by deceased at the time of his death, it has been contended on behalf of the appellants that Smt. Santosh Kumari, one of the daughters of the deceased was deserted by her husband during the lifetime of the deceased and she was living with him in his house. According to them, there was no reason for the testator to disinherit her from the estate and, therefore this casts a doubt on the validity of the Will alleged to have been left by the deceased. 15. In this regard, reference has been made by the learned ADJ to the contents of the Will and relevant portion has been narrated in the judgment which reads as follows:

I am also blessed with two daughters, namely Smt. Manorma mahajan wife of Shri Dina Nath Mahajan aged about 45 years and Smt. Santosh Kumari aged about 43 years. My first daughter is happily married and living in Daulat Pur Chowk, Himachal Pradesh and I have spent a handsome amount on the marriage of my above said daughter according to my ability; hence she shall have no share in my above said property. My second daughter namely Smt. Santosh Kumari is a divorcee and at present maintained by my second son namely Shri Mahinder Pal Gupta aged about 41 years. As Smt. Santosh Kumari (my second daughter) and Shri Mahinder Pal Gupta (My second son) are of quarrelsome nature and have created a lot of problems for me, I hereby declare that they (Shri Mahinder Pal Gupta and Smt. Santosh Kumari) shall have no right to my above said property even after my death. Both Shri Mahinder Pal Gupta and Smt. Santosh Kumari are living in rear portion of my property No. 11/32, Subhash Nagar, New Delhi -110027 and I am trying very hard to get my house/portion from Shri Mahinder Pal Gupta and Smt. Santosh Kumari vacated from both of them in my life time, then both my sons to whom I bequeath my property i.e. Shri Rajinder Pal Gupta and Shri Narinder Pal Mahajan, shall have the absolute right to take back the possession of portion in occupation of Shri Mahinder Pal Gupta who is living therein with his wife and children besides Smt. Santosh Kumari.

14. Thus, the learned ADJ observed that there were reasons given by the deceased for excluding Sh. Mahinder Pal Gupta and Smt. Santosh Kumari out of deriving any benefit from his estate and which was well founded. At this stage, I may also observe that disinheritance of one or more legal heirs does not cast doubt on the veracity of the execution of the Will or in isolation cannot be taken as a suspicious circumstance. Reference can be made to the judgment of the Hon"ble Supreme Court in Ramabai Padmakar Patil (D) through LRs. and Others

Vs. Rukminibai Vishnu Vekhande and Others, wherein it has been observed as under:

7. The main reason which weighed with the learned District Judge in discarding the Will, which has also appealed to the High Court, is that Smt. Yamunabai completely disinherited her other daughters and gave the entire property to Smt. Ramabai. In our opinion, the fact that Smt. Yamunabai excluded all other daughters and gave the entire property to the plaintiff Smt. Ramabai could not be a ground to cast any doubt regarding the authenticity of the Will in the facts and circumstances of the case in hand. It is not a case of exclusion of a son who may have been living with the parents or looking after them. It is a case of making provision for a widowed daughter who had been left a destitute on account of death of her husband at a very early age. If the parental property was to be divided equally amongst all the seven sisters, the share inherited by Smt. Ramabai would have been quite small making it difficult for her to survive. The house is situate in a village and is not in a big town or city where it may have any substantial value. In fact, if the background in which the Will was executed is examined carefully, it would be apparent that this was the most natural conduct of the mother and giving of equal shares to all the daughters would have entailed a serious hardship to the plaintiff Smt. Ramabai.

8. A Will is executed to alter the mode of succession and by the very nature of things it is bound to result in either reducing or depriving the share of a natural heir. If a person intends his property to pass to his natural heirs, there is no necessity at all of executing a Will. It is true that a propounder of the Will has to remove all suspicious circumstances. Suspicion means doubt conjecture or mistrust. But the fact that natural heirs have either been excluded or a lesser share has been given to them, by itself without anything more, cannot be held to be a suspicious circumstance especially in a case where the bequest has been made in favour of an offspring. In P.P.K. Gopalan Nambiar Vs. P.P.K. Balakrishnan Nambiar and others, it has been held that it is the duty of the propounder of the Will to remove all the suspected features, but there must be real, germane and valid suspicious features and not fantasy of the doubting mind. In this case, the fact that the whole estate was given to the son under the Will depriving two daughters was held to be not a suspicious circumstances and the finding to the contrary recorded by the District Court and the High Court was reversed. In Pushpavathi and Others Vs. Chandraraja Kadamba and Others, , it has been held that if the propounder succeeds in removing the suspicious circumstance, the Court would have to give effect to the Will, even if the Will might be unnatural in the sense that it has cut off wholly or in part near relations. In Rabindra Nath Mukherjee and another Vs. Panchanan Banerjee (dead) by L.Rs. and others, , it was observed that the circumstance of deprivation of natural heirs should not raise any suspicion because the whole idea behind execution of the Will is to interfere with the normal line of succession and so, natural heirs would be debarred in every case of Will. Of course, it may be that in some cases they are fully debarred and in some cases partly. The concurrent finding recorded by the

District Court and the High Court for doubting the genuineness of the Will on the aforesaid ground was reversed.

15. Thus, when reasons are supplied, keeping one or all out of the purview of the benefits of the estate by a testator, would not mean suspicious circumstances so as to hold that the execution of the Will itself be treated as doubtful. Reference can also be made to another judgment of the Supreme Court in the case of Uma Devi Nambiar and Others Vs. T.C. Sidhan (Dead), where also while relying upon the various provisions of the Succession Act, 1925 and in the context of the word "suspicious", it has been observed that although the propounder of the Will has to remove all suspicious circumstances but mere exclusion of natural heirs or reduction of their share would not itself amount to a suspicious circumstances, especially when the bequest is in favor of an offspring.

16. In view of the aforesaid read with the reasons supplied in the Will itself by the testator for having disinherited the appellants from the suit property, this circumstance also cannot be considered as a suspicious circumstances for holding that the order granted by the learned ADJ was not justified or calls for any interference. As regards, reference made by the deceased testator regarding the exclusion of two objectors/appellants, mentioning of the quarrelsome nature of those persons having created lot of problems to the testator, Sh. Mahinder Pal Gupta appearing as RW-2 in his examination-in-chief has deposed on oath that during the life time of his father his father had partitioned the property which has been bequeathed by the Will Ex.pB in two portions. He stated that his father and both his brothers who are beneficiaries under the Will were living in one portion of the property and he along with his sister Smt. Santosh Kumari were living in the other portion of the said property. RW-2 Shri Mahinder Pal Gupta candidly admitted in his cross-examination that during the life time of the deceased, deceased had erected a wall between his portion and the portion of the objectors and he further admitted that the Wall was raised by his father in August, 1985. It is further clarified by this gentleman in his cross-examination that his deceased father was being looked after since 85 by the petitioners and ever since then he was got treated and looked after only by the petitioners. It is crucial to note that the will Ex.pb was executed by the deceased on 14.11.85. The admission of RW-2 Shri Mahinder Pal Gupta that his father had erected a partition wall between the portions occupied by the objectors and that of the petitioners in August, 1985 would show that the deceased was not maintaining good relations with the objectors at the relevant time when the Will Ex.Pb was executed by him in November, 85. It is mentioned by the deceased himself in his will Ex.PB that both the objectors were of quarrelsome nature and they had created lot of problems for him in his life time.

17. In view of the aforesaid, I find no reason to disturb the findings returned by the learned ADJ. I may observe her that in this case a wall has been constructed between the portion in which the appellants are residing and the portion in which the beneficiaries under the Will are residing which has been constructed as the

deposed by Mahinder Pal Gupta prior to the execution of the Will. This itself reflects upon the intention of the testator and, therefore, anything said by the testator in the Will now cannot be re-opened by the objector merely because they have not received any share in the property.

18. For the reasons discussed above, I find no reasons to disturb the findings returned by the learned ADJ. Accordingly, the appeal is dismissed with no order as to costs.

CM No. 4051/2008

The statement made by learned Counsel for the respondent on 15.12.2009, which stands clarified on 10.03.2010 stands vacated.

Application stands disposed of.