
(1997) 06 AP CK 0051
In the Andhra Pradesh High Court
Case No : L.P.A. No. 12 of 1997

P. Seshamma and Others

APPELLANT

Vs

Dr. Pathri Krupa Sagar and Others

RESPONDENT

Date of Decision : 11-06-1997

Acts Referred:

Citation : (1997) 4 ALT 423 : (1997) 3 APLJ 56

Hon'ble Judges : Lingaraja Rath, J; Krishna Saran Shrivastav, J

Bench : Division Bench

Advocate : Vedula Venkataramana, for the Appellant; C. Susheela Devi, for the Respondent

Final Decision : Dismissed

Judgement

Lingaraja Rath, J.—The plaintiffs are the appellants. Against the order of the learned Single Judge upholding the judgment of the learned V. Addl. Judge, City Civil Court, Hyderabad, dismissing the suit O.S. 872 of 1982 brought for partition and allotment of 1/4th share in the properties left behind by Mr. C. Narasimha Bindu, this appeal has been preferred. Late Narasimha Bindu was the father-in-law of appellant No. 1 and the paternal grand-father of appellants 2 and 3. The husband of appellant No. 1 and the father of appellants 2 and 3 Dr. Dayasagar Patri had pre-deceased his father Narasimha Bindu. Narasimha Bindu died on 6-6-81. The claim of the appellants was based upon Ex. A-9 Will executed by Narasimha Bindu, in which all his sons had been given equal shares in the property. The suit was resisted by the respondents on the pleadings that Ex. A-9 will was substituted by a later Will Ex. B-8 in which the appellants were deprived of any share in the properties. Since the learned Addl. Judge upheld the validity of Ex. B-8 and held Ex. A-9 as not the last Will of the testator and the said findings were upheld by the learned Single Judge, the present appeal has been preferred.

2. In the order of the learned Single Judge a portion of the Will Ex. B-8 has been extracted to show the reasons which weighed with the testator to disentitle the

appellants" branch from inheritance. It will be useful to extract the same here:

"I had four sons, the first son Patri Dayasagar (Late Dr. D.S. Patri) has since deceased. It is now more than two and half years. Since then, my first daughter-in-law, Smt. P. Seshamma, the widow of my first son has started trouble in the family. Her behaviour and her arrogance has upset the peace and unity in the family. She has turned hostile and inimical to me and all the members of my family, including my other daughters-in-law. Her two sons Chi. Ajay Sinha and Chi. Abhaya Sinha also turned hostile to us. Despite all my efforts to give them college education and spending money over them, they remained dull and stupid and antagonistic. After the death of my first son I got his daughter Chi. Sow. Urmila married. All my sons and their families went to Kanakagiri and performed the marriage. But all are under the influence of their mother who had cultivated hatred towards all others in the family. Chi. Sow. Urmila is now a mother of a female child. But she is also under her mother"s instigation."

3. Mr. Venkataramana, the learned Counsel for the appellants has advanced submissions that while he does not dispute the execution of the Will, yet the Will has to be recorded as not genuine because of the suspicious circumstances attended to it. It is argued that the very fact that a natural line of succession was deviated from and a branch of one of the sons" family was completely disinherited is itself a suspicious circumstance of great magnitude and that unless by independent evidence the Propounder of the Will explains the reason for the exclusion of the appellants" branch from the Will, the Will is not a Will which has to be given effect to. A submission is advanced that the recitals in the Will itself would not be relied upon as an explanation to the suspicious circumstances and that such explanation must come by way of independent evidence led by the Propounder or from the attendant circumstances.

4. Even though such a plea is raised, yet to our pointed question as to whether the proposition is supported by any decisions and on our granting adjournment for the purpose, yet no such decision is cited before us. Mr. Venkataramana however places reliance on three decisions, viz., Ram Piari Vs. Bhagwant and others, Kalyan Singh Vs. Smt. Chhoti and Others, and Smt. Jaswant Kaur Vs. Smt. Amrit Kaur and Others, to support his plea of the Will as not entitled to be relied upon and given effect to when there are suspicious circumstances of displacement of a natural inheritor to the property. Before we take-up the citations submitted by Mr. Venkata Ramana it is pertinent to note certain circumstances attending the Will.

1. Apart from the evidence, the respondents had also produced a handwritten draft of a Will which had been prepared by the Attestor (sic. estator) in his own hand. The Will Ex. B-8 is a typed document reproducing the contents of the handwritten Will.

2. D.W.I - the first defendant and respondent No. 1 also produced the diary maintained by the Attestor (sic. testator) which was marked as Ex. B-6. Ex. B-7

is an entry in the diary on 22-7-89 in the handwriting of the Testator about the execution of the Will Ex. B-8 and about its attestation by D.Ws. 2 and 4.

3. D.Ws. 3 and 4 are the attesting witnesses to the Will who have duly proved it. Apart from it D.W. 2 is a Notary Advocate who had also attested the Will and deposed of he having been present when the deceased Narasimha Bindu executed the Will. The Will itself carried the statement of a Doctor that at the time of execution of the Will Narasimha Bindu was in full possession of his mental faculties and capable of making a Will and sign it. The endorsement was signed by Dr. Krishna Rao Maniker.

5. It appears from the evidence of D.W. 1 that by the time the evidence was led, the Doctor was dead and his endorsement was proved by him.

6. The decision in Smt. Jaswant Kaur Vs. Smt. Amrit Kaur and Others, has been relied by Mr. Venkataramana by drawing our attention to paragraph 10 thereof which itself reproduces the observations of Sri Gajendragadkar, J. in H. Venkatachala Iyengar Vs. B.N. Thimmajamma and Others, . Sub-Paragraphs 3 and 4 of the said para read as follows:

"Unlike other documents, the Will speaks from the death of the testator and therefore the maker of the Will is never available for deposing as to the circumstances in which the Will came to be executed. This aspect introduces an element of solemnity in the decision of the question whether the document propounded is proved to be the last Will and testament of the testator. Normally, the onus which lies on the propounder can be taken to be discharged on proof of the essential facts which go into the making of the Will.

Cases in which the execution of the Will is surrounded by suspicious circumstances stand on a different footing. A shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the Will under which he receives a substantial benefit and such other circumstances raise suspicion about the execution of the Will. That suspicion cannot be removed by the mere assertion of the propounder that the Will bears the signature of the testator or that the testator was in a sound and disposing state of mind and memory at the time when the Will was made or that those like the wife and children of the testator who would normally receive their due share in his estate were disinherited because the testator might have had his own reasons for excluding them. The presence of suspicious circumstances makes the initial onus heavier and therefore in cases where the circumstances attendant upon the execution of the Will excite the suspicion of the Court, the propounder must remove all legitimate suspicions before the document can be accepted as the last Will of the testator."

7. As the observations would show that it only high-lighted the responsibility of the propounder to prove that the Will sought to be proved was the last Will of the testator and that when the Will has suspicious characters, some of which have been illustrated therein, the suspicion must be removed not only by mere

assertion of the propounder as to the genuineness of the signature of the testator and his disposing state of mind or memory, but obviously evidence also has to be let-in to explain the suspicious circumstances. The decision only goes to show that the initial onus upon the propounder is heavier in such circumstances.

8. The decision in Kalyan Singh Vs. Smt. Chhoti and Others, is only relevant to the extent that where there are suspicious circumstances, the propounder should explain them before the Will could be accepted as genuine. In Ram Piari Vs. Bhagwant and others, their Lordships observed that although freedom to bequeath one's own property amongst Hindus is absolute, both in extent and person, including rank stranger, yet to have testamentary capacity or a disposing state of mind, what is required of a propounder to establish is that the testator at the time of disposition knew and understood the property he was disposing and persons who were to be beneficiaries of his disposition. Prudence, however requires reason for denying benefit to those who too were entitled to bounty of testator as they had similar claims on him. Absence of it may not invalidate a Will but it shrouds the disposition with suspicion as it does not give any inkling to the mind of the testator to enable the Court to judge if the disposition was a voluntary act.

9. These authorities would show that the Court must be satisfied as to the genuineness of the disposition. There must be satisfaction that the testator was in full control of his mind and aware of his actions. The Court has to reach the conclusion that the disposition was a voluntary act and had been made while he was in complete possession of his senses. An absolute power of disposition has to be balanced along with unnatural disposition and where it is so, the Court should naturally be alert to scrutinise the voluntary disposition. But once a conclusion is reached or attendant circumstances show that the testator had directed a particular method of disposition of the property and had intended it, such an intention has to be respected. In the present case there is overwhelming evidence of the testator late Narasimha Bindu to have reasons for disinheriting the appellant's branch. The very fact that the text of the Will had been written in his own hand earlier word to word goes a long way to show that, he intended every word of the Will Ex. B-8. Not only that he also made a subsequent entry in his own diary in his own hand regarding the execution of the Will and also regarding its attestors. Mr. Venkataramana very fairly does not dispute the execution of the Will. In these circumstances, there is no reason as to why the recitals in the Will giving the reason for deprivation of appellant's branch from succession, would not inspire the confidence of the Court. This is the precise conclusion reached by the learned Single Judge. We, hence do not find any merit in the appeal.