

(2001) 09 JH CK 0071

In the Jharkhand High Court

Case No : Appeal from Original Order No. 51 of 1998 (R)

Padmawati Jain

APPELLANT

Vs

Ajit Kumar Jain and Others

RESPONDENT

Date of Decision : 19-09-2001

Acts Referred:

Succession Act, 1925 — Section 218, 61

Citation : AIR 2002 Jhar 36

Hon'ble Judges : Gurusharan Sharma, J

Bench : Single Bench

Advocate : Prakash Kishore Prasad, for the Appellant; Debi Prasad S.K. Murthy and Amit Kumar, for the Respondent

Final Decision : Allowed

Judgement

Gurusharan Sharma, J.—Bhagirath Mull Jain of Makatpur, Giridih, died on 7.10.1985, leaving behind his widow, Pad-mawati Jain, three sons, Ajit Kumar Jain, Trilok Chand Jain and Ashok Kurnur Jain, and three daughters, Sarita Kumari Jain, Mala Kumari Jain and Munni Kumari. One of the daughters, namely, Munni Kumari died un-married on 2.12.1990.

2. The widow, Padmawati Jain filed Probate Case No. 25 of 1993 for grant of probate of a Will dated 6.12.1988, executed by her late husband in her favour. Her case was that her husband after execution of the said Will handed it over in a sealed cover to Gajraj Ji Bhartiya of Giridih with a direction that after his death, its contents should be read over by him in presence of his legal heirs.

3. Only Ajit Kumar Jain, the eldest son of the testator contested the Probate Case-.

According to him, the Will was forged, fabricated, ante-dated and it was not the Will of the testator. Late Bhagirath Mull Jain. The movable properties for which the Will was said to have been executed were all joint family properties and as such the testator had no right to execute the Will in favour of his wife alone for

the entire joint family properties.

Further case of the objector was that his mother was in dominating capacity in the family. She was always insisting his father to transfer the entire properties to her. At the time of execution of the Will, health of the testator was not proper and he was lying regularly sick due to fracture of his thigh bone and was all along bed ridden till his death. He has already filed a Partition Suit No. 51 of 1994, which is pending.

4. There were three attesting witnesses on the Will (Exhibit 5). One of the attesting witnesses, namely. Sawar Mull Ji Bhartiya was dead. Narendra Kumar Sharma, Advocate, who had prepared the draft of the Will and was also attesting witness thereon was examined as AW 2. The second attesting witness, Dr. Sukhmay Chaudhary, was examined as AW 3.

5. AW 2 stated that the testator had executed the Will in full consciousness of mind and had valid testamentary capacity. On the instruction of the testator, he had drafted the Will, which was corrected to some extent, by him and after his final approval, it was typed on stamp-paper. After finding it to be correct, the testator put his signatures on each and every page of the said Will and the three witnesses also put their signatures thereon. The signatures of the testator as well as the three witnesses on the Will were not challenged by the objector.

6. The only point for consideration before the court below was whether the Will (Exhibit 5) was executed by the testator without any pressure or it was an ante-dated document.

7. On the basis of the evidence, brought on record, the trial Court found that the Will was executed by the testator in his full sense and he was having capacity of disposition at the relevant time.

8. It is well settled that once execution of Will is proved, the burden to prove that it was fabricated or manufactured or was obtained by committing fraud and coercion was upon the shoulder of the objector, to prove it in Court.

9. It is true that the testator was bed ridden due to injury in his waist prior to his death. But PW 3, the doctor, who was also one of the attesting witnesses on the Will, stated in paragraph 17 of his cross-examination that when he had gone to Bhagirath Mull Jain to witness execution of will at that time, he was quite fit (SWASTHA THE). It was, therefore, proved that the testator had testamentary capacity and power of understanding on 6.7.1983, when he executed the Will (Exhibit 5), which was executed in presence of AWs 2 and 3, who are the attesting witnesses.

10. In my opinion, the objector miserably failed to prove that either Exhibit 5 was ante-dated or it was got executed by the testator under any pressure or undue influence by his wife.

11. I, therefore, set aside the impugned judgment/order, whereby the trial Court

dismissed the Probate Case No. 25 of 1993. Consequently, the probate of the Will (Exhibit 5) is granted.

12. In the result, this Appeal is allowed, but without costs, with the above observations. Let the lower Court records be sent down immediately.

Appeal allowed.