
(2009) 05 RAJ CK 0004
In the Rajasthan High Court

Parmanand

APPELLANT

Vs

Om Prakash

RESPONDENT

Date of Decision : 05-05-2009

Acts Referred:

Succession Act, 1925 — Section 299

Citation : (2009) 2 WLN 596

Hon'ble Judges : Dalip Singh, J

Bench : Single Bench

Judgement

Dalip Singh, J.—This misc. appeal has been filed by the applicant-appellant against the judgment dt. 06.10.1997 passed by the learned District Judge, Sawai Madhopur in Civil Misc. Case No. 63/1994 by which the application submitted by the applicant-appellant for grant of probate in respect of the Will executed by the deceased Smt. Kadam Bai in favour of Hari Narain father of the appellant was dismissed.

2. The facts in brief which are relevant for consideration of the present appeal are that the deceased Smt. Kadam Bai in the first instance executed a Will dt. 13.12.1984 in favour of Om Prakash respondent No. 1 who is said to be the son of the daughter of the deceased Smt. Kadam Bai.

3. Thereafter the deceased Smt. Kadam Bai executed another Will dt. 14.03.1985 in favour of Hari Narain the father of the appellant cancelling the earlier Will dt. 13.12.1984 executed in favour of respondent No. 1 Om Prakash.

4. Hari Narain father of the applicant predeceased the testator Smt. Kadam Bai having died on 25.02.1988, where as Smt. Kadam Bai died on 25.05.1994.

5. Smt. Kadam Bai is alleged to have executed a fresh Will dt. 24.05.1994 in favour of Om Prakash respondent No. 1. Thereafter on the very next day i.e. on 25.05.1994 Smt. Kadam Bai also died.

6. The appellant-applicant filed an application on 06.07.1994 for grant of probate

in respect of the Will dt. 14.03.1985 executed by deceased Smt. Kadam Bai in favour of Hari Narain father of the applicant- appellant.

7. The aforesaid application was opposed by the respondent No. 1. The respondent No. 1 opposed the grant of probate in favour of the applicant-appellant and submitted his objections on 15.12.1994 wherein there was denial to the execution of the alleged Will dt. 14.03.1985 in favour of the deceased Hari Narain and apart from that the respondent also set up the case that the last Will was executed by the deceased Smt. Kadam Bai on 24.05.1994 and accordingly the application submitted by the appellant-applicant be dismissed and a probate of the Will dt. 24.05.1994 may be granted in his favour.

8. The learned District Judge during the course of trial recorded the evidence. On the side of the applicant-appellant, the applicant Parmanand appeared himself as AW 1 and the other witnesses are AW2 Atma Ram and AW3 Vishnu Dutt Kurmi. Atma Ram claimed to be the witness to the execution of the Will dt. 14.03.1985 Ex.1 whereas Vishnu Dutt Kurmi AW3 was the Advocate who was the scribe of the Will Ex.1 and put his signatures as well and also testified at the time of registration of the Will dt. 14.03.1985 in favour of Hari Narain.

9. From the side of the respondent, the respondent examined four witnesses NAW-1 Om Prakash himself, NAW-2 Prahlad who claimed to be the attesting witness to the Will dt. 24.05.1994 executed by the deceased Smt. Kadam Bai and NAW-3 Om Pakash son of Lallu Prasad who claimed to be the scribe of the Will dt. 24.05.1994 and NAW-4 Hari Shankar who was also alleged to be one of the witnesses to the execution of the Will by Smt. Kadam Bai on 24.05.1994.

10. The learned District Judge framed issues No. 1 to 3 which read as follows:

1- D;k e`rdk dne ckbZ us fnukad 14-03-1985 dks izkFkhZ ds i{k esa olh;r dh Fkh ftlds vk/kkj ij izkFkhZ izksksV ikus dk vf/kdkjh gS

2- D;k e`rdk dne ckbZ us viuh vafre olh;r vizkFkhZ ds i{k esa dh gS] bl dkj.k ogh izksksV ikus dk vf/kdkjh gS

3- vuqrks"k

11. Learned District Judge after appreciation of the evidence of the parties decided the issues No. 1 and 2 together that the Will dt. 24.05.1994 was a validly executed Will and further that since the same was the last Will of the deceased Smt. Kadam Bai, the earlier Will dt. 14.03.1985 loses its importance and no rights accrued to the applicant-appellant on the basis of earlier Will dt. 14.03.1985. Accordingly the learned District Judge dismissed the application submitted by the applicant-appellant and held that the respondent Om Prakash was entitled to the grant of probate for the Will dt. 24.05.1994. in his favour.

12. Hence this appeal u/s 299 of the Indian Succession Act, 1925 by the applicant-appellant. Learned Counsel for the applicant-appellant submitted that the findings arrived at by the learned District Judge so far as the execution of the

subsequent Will dt. 24.05.1994 are concerned are erroneous inasmuch as the Will is surrounded by suspicious circumstances and cannot be relied upon. It was therefore contended that the learned District Judge has proceeded to examine only the validity of subsequent Will dt. 24.05.1994 and not its genuineness. It is contended that in case the said Will dt. 24.05.1994 does not stand scrutiny and is held to be surrounded by suspicious circumstances the judgment passed by the learned District Judge in favour of the respondent is liable to be set aside and accordingly since the Will dt. 14.03.1985 in favour of the father of the applicant-appellant was a registered Will and having been proved by producing the scribe Vishnu Dutt Advocate AW-3 as well as one of the attesting witness AW2 Atma Ram, who has proved the attestation and the signatures of the deceased as well as the other witnesses Om Prakash and Kailash Bux the Will dt. 14.03.1985 stands proved and therefore the appellant-applicant would be entitled to the grant of probate in respect of the Will dt. 14.03.1985 executed by deceased Smt. Kadam Bai.

13. So far as the suspicious circumstances are concerned the learned Counsel for the applicant-appellant submitted that the Will Ex.A1 dt. 24.05.1985 was executed just one day prior to the death of Smt. Kadam Bai who died on 25.05.1994 . She was 85 years of age at the time of her death as per the aforesaid document Ex.A1 itself and was also ill. She was not in a sound state of mind at the time of the execution of the Will Ex.A1 dt. 24.05.1994 and she could not comprehend or understand the contents of the documents or what was written in the same.

14. To substantiate the above it was further submitted that the fact that she was unable to understand or comprehend what was written in the Will is apparent from the fact that in respect of the Will dt. 14.03.1985 Ex.1 the deceased Smt. Kadam Bai wrote as follows:

esjs }kjk ijekUn dks tks olh;r&(vifBr) us cgdkdj fy[kok yh Fkh mldks fujLr le>k tkos rFkk fnukad 13-12-1984 dh olh;r dks eS iqu% ekU;rk nsrs gq, fQj olh;r djrh gwa fd esjh e`R;q ds ckn esjh py o vpy lEifr dk okfjl vkSe izdk?k iq= d`".k xksiky gh jgsxkA vksj og gh esjh e`R;q ds ckn esjk f?;kdeZ djsxkA ;g olh;r eSus LoLF; fpRr jkth [kq?kh ls fy[k rgjh dh gS vHkh eS pyus fQjus dh gkyr esa ugh gwa blfy, jftLV?h ugha djok ldrh gwaA rFkk LoLF; gksus ij jftLV?h dj k nwaxhA vU;Fkk bls dkuwuh ekU;rk nh tkosA

The submission of the learned Counsel for the applicant-appellant is that there was no Will executed by the deceased Smt. Kadam Bai in favour of Parmanand the appellant-applicant which goes to show that the Will dt. 24.05.1994 was not dictated and written at the instance of the deceased as the deceased could not have stated that she has executed a Will in favour of Parmanand which fact was in her knowledge as her earlier Will dt. 14.03.1985 Ex.1 was in favour of Hari Narain and not Parmanand. It is submitted that this fact goes to show that either the Will has been fabricated subsequently by the respondent or in the alternative it goes to fortify the contention of the appellant that the deceased was not in a

sound state of mind so as to give correct information to the scribe on 24.05.1994 a day prior to her death.

15. It is further submitted by the learned Counsel for the applicant-appellant that it is apparent from the statement of the witnesses of the respondent Om Prakash AW-3 that Om Prakash respondent himself purchased the stamp on which the alleged Will is executed. A look at the stamp Ex.A1 goes to show on the reverse that the stamp vendor has clearly written that the stamp was purchased for preparing a "Mukhtiyarnama" i.e. power of attorney and the said stamp paper was purchased by Smt. Kadam Bai deceased on 24.05.1994 itself. It is submitted that firstly the stamp paper was never purchased by the deceased for the execution of the Will and further in the facts and circumstances which have come on record in the evidence that the deceased was ill and not in good health and died the very next day on 25.05.1994. This goes to show that the deceased Smt. Kadam Bai could not have gone to purchase the Stamp paper from the Stamp Vendor from her village. It is further submitted by the learned Counsel for the applicant-appellant that other members of the family were present at the time of execution of the Will namely the daughter of the deceased and other close relatives, but instead of those close relatives, strangers were made the attesting witnesses Prahlad NAW-2, Hari Narain NAW-4 were called for this purpose from a distance. It is further submitted that the deceased was not keeping well and was ill which is apparent from the statement of the aforesaid witnesses of the respondent who have clearly deposed that the deceased Smt. Kadam Bai was being treated for her illness by Dr. Ramphool Meena but the aforesaid treating doctor of the deceased has not been examined as he could prove and depose about the illness of the deceased as well as her state of mind at the time of the execution of the Will just a day prior to her death.

16. On the basis of the above it is contended that the alleged Will dt. 24.05.1994 Ex.A1 is surrounded by suspicious circumstances and therefore cannot be relied upon and the learned District Judge has erred in passing the order in favour of the respondent for grant of probate for the said Will dt. 24.05.1994 in favour of the respondent.

17. Learned Counsel for the respondent on the other hand at the very outset submitted that the appellant-applicant has no locus standi to file an application for the grant of probate in respect of the Will Ex.1 dt. 14.03.1985 executed by the deceased Smt. Kadam Bai in favour of Hari Narain. It is submitted that Hari Narain died on 25.02.1988. Whereas Smt. Kadam Bai died on 25.05.1994. It is submitted that since a Will takes effect and gives rise to the rights under it only after the death of the testator, Hari Narain having predeceased Smt. Kadam Bai the testator, no rights accrued in favour of the deceased Hari Narain and therefore the applicant being the son of Hari Narain had no right to seek probate in respect of the Will dt. 14.03.1985 executed in favour of Hari Narain.

18. Learned Counsel for the respondent supported the judgment of the learned District Judge and contended that the subsequent Will dt. 24.05.1994 had been

proved by the respondent by producing the attesting witnesses as required u/s 63 of Succession Act, 1925 read with Section 68 of the Evidence Act. It is further contended that the so called suspicious circumstances in the light of the direct evidence of the witnesses lose their importance and the judgment of the learned District Judge therefore calls for no interference.

19. It is further contended by the learned Counsel for the respondent that the burden lies upon the appellant-applicant to prove that the Will dt. 24.05.1994 was false and fabricated but the appellant has failed to discharge the aforesaid burden.

20. I have heard the learned Counsel for the parties and considered the rival submissions. So far as the first objection of the respondent with regard to locus standi of the appellant-applicant to file the application for grant of probate of the Will in favour of Hari Narain dt. 14.03.1985 executed by Smt. Kadam Bai is concerned I am of the view that the objection deserves to be upheld.

21. Admittedly the Will dt. 14.03.1985 was executed in favour of Hari Narain the father of the appellant-applicant. Hari Narain predeceased the testator Smt. Kadam Bai. Since the Will take effect only after the death of the testator the beneficiary or the executor under the Will, Hari Narain having predeceased the testator no rights under the Will accrued in favour of the deceased Hari Narain through whom to the appellant seeks to claim his rights. Question therefore arises with regard to the rights of the applicant-appellant for filing of the application for the grant of probate in favour of his father Hari Narain who died before the Testator. The Courts have held in cases of death of the applicant on application being filed for substitution of the Legal Representatives of the applicant in a case for grant of probate/succession certificate that the proceedings abate and there can be no substitution of the heirs of the deceased applicant who filed the application for grant of succession certificate based upon the Will in his favour. In this behalf reliance may be placed upon the judgment of the Patna High Court in Deo Kumar Singh Vs. Kailash Singh, wherein Hon''ble N.L. Untwalia J. (as he then was) held as follows:

...on the death of an applicant for a succession certificate the proceeding lapses and there can be no substitution of the heirs or the alleged heirs of the applicant,

A similar view was taken by the learned Single Judge of the Allahabad High Court in the case of Barumal Singh Vs. 3rd Additional District Judge, Saharanpur and Others, wherein the learned Single Judge relied upon the judgment of the Patna High Court in the case of Deo Kumar Singh v. Kailash Singh (supra) and held as follows:

So far as the application made by Smt. Vidha is concerned, her right in the property of Padam Prasad came to an end by her death and, as such, in my opinion, no application under Order 22 Rule 3, CPC is maintainable in law

22. In coming to above finding and conclusion the learned Single Judge relied

upon the judgment of the Calcutta High Court in the case of Sharat Chandra Banerjee v. Nani Mohan Banerjee. reported in 1909 (3) ICP995 where the Calcutta High Court had taken the view that the right to sue does not survive after the death of the sole executor.

23. The learned Single Judge of the Allahabad High Court in Barumal Singh's case also relied upon the subsequent judgment of the Calcutta High Court in S.M. Fatemanesha Begum v. Mahadin. reported in (1994) 48 WLN 673 wherein the Division Bench of the Calcutta High Court negated contention and held that on the death of the applicant for grant of succession certificate does not survive on the death of the applicant and the proceedings lapse.

24. A similar view had been taken by the Calcutta High Court in the matter of an application for grant of letters of administration which was also relied upon by the learned Single Judge of Allahabad High Court which is in the case of Hari Bhusan Datta Vs. Manmatha Nath Datta and Others, wherein the learned Single Judge of the Calcutta High Court held that in the proceedings for the grant of letters of administration, an application for substitution filed by the heir of the deceased applicant does not lie. In view of the above it can be deduced that when legal representatives of the legatees/executors who filed the application do not have any right to seek substitution such heir of the deceased executor can not file the application for the grant of probate when the executor had predeceased the Testator.

25. From the above it is clear that on the death of legatee Hari Narain under the Will dt. 14.03.1985 executed by Smt. Kadam Bai who predeceased Smt. Kadam Bai, no rights accrued to the applicant as son of deceased Hari Narain so as to entitle him to seek probate in respect of the Will dt. 14.03.1985 executed in favour of his deceased father.

26. Since the present one is a case where the executor (deceased Hari Narain) being sole beneficiary has predeceased the testator no rights had accrued to the appellant under the Will as the heir of Hari Nartain and therefore he has no rights to claim probate based upon the Will dt. 14.03.1985 in favour of Hari Narain. Accordingly I would hold that the applicant does not have any locus standi to file the application for grant of probate in respect of the Will dt. 14.03.1985 executed by Smt. Kadam Bai in favour of the father, of the applicant-appellant, Hari Narain who predeceased Smt. Kadam Bai the testator. The application submitted by the applicant appellant accordingly deserves to be dismissed.

27. However, since the learned District Judge by the impugned judgment passed an order for grant of probate in favour of the respondent in respect of Will dt. 24.05.1994 executed allegedly by the deceased Smt. Kadam Bai in favour of the respondent No. 1 the submission of the learned Counsel for the applicant-appellant in this behalf relating to the suspicious circumstances need to be examined.

28. In this behalf it is necessary to take into account the pleadings of the parties

so as to appreciate why the learned District Judge proceeded to examine the case with regard to the subsequent will dt. 24.05.1994. In the additional pleas it was clearly stated by the respondent that the deceased had prior to her death executed her last Will dt. 24.05.1994 in favour of the respondent No. 1. In the reply filed on 15.12.1994 the respondent No. 1 prayed as under:

vr% tokc vizkFkhZ dh vksj ls is?kdj vtZ gS fd izkFkhZ dk izkFkZuk i= [kkfjt Qjek;k tkos rFkk vizkFkhZ ds gd esa e`rdk dne ckbZ dk vksosV tkjh fd;k tkosA

The reason for mentioning the above prayer made in the pleadings is that it was submitted by the learned Counsel for the respondent that the Court having found that the applicant appellant had no locus standi to file the application and the appeal filed by the applicant should be dismissed on this ground and that this Court should refrain from deciding the question relating to the validity/ genuineness of the Will dt. 24.05.1994.

29. So far as the above contention is concerned the order passed by the learned Court below requires to be looked into. The same reads as follow:

vkns?

vr% izkFkhZ ijekuan dk izkFkZuk i= [kkfjt fd;k tkrk gS rFkk foi{kh vkse izdk?k dk izkFkZuk i= Lohdkj fd;k tkrk gSA foi{kh vkse izdk?k e`rdk dne ckbZ dh IEif?k dk izkscsV ikus dk vf/kdkjh gSA foi{kh vkse izdk?k e`rdk dne ckbZ dh izkscsV ds fy, IEif?k dh lwph e; uxj ikfydk lhek esa ;fn IEif?k gS rks uxj ikfydk ls osY;w,s?ku fjiksVZ ,oa [ksrks ds IEcU/k esa rglhynkj ckWyh dh osY;w,s?ku fjiksVZ ds ,d ekg esa is?k djsxk rks fu;ekuqlkj dksVZ Qhl ds ckcr~ lquk tkdj izkscsV izek.k i= tkjh fd;k tk;sxA

30. As would be seen from the above, while the application submitted by the appellant was dismissed the learned Court below has ordered for grant of probate in favour of Om Prakash respondent in respect of the Will dt. 24.05.1994 in his favour.

31. In view of the pleadings and the findings of the learned District Judge on issue No. 2 which is whether the deceased Smt. Kadam Bai had made her last Will in favour of the respondent and the respondent is entitled to probate on the same, as well as the order passed in favour of the respondent granting probate in his favour based upon the Will dt. 24.05.1994 it has become necessary for this Court to examine the contentions which have been raised by the learned Counsel for the appellant-applicant regarding the genuineness of the Will set up by the respondent dt. 24.05.1994 and the right of the respondent to seek probate in respect of the same.

32. The suspicious circumstances which have been pointed by the learned Counsel for the appellant are to the effect that in the Will dt. 24.05.1994 mention has been made of an earlier Will made in favour of the appellant Parmanand, which is not a correct statement of fact as there is no such will executed by the deceased in favour of Parmanand. This assumes importance

firstly as it goes to show that either the Will dt. 24.05.1994 was not dictated by the deceased or the deceased was not in a sound state of mind as the earlier Will was not in favour of Parmanand but in favour of Harinarain or that it was prepared subsequently after the death of Smt. Kadam Bai by a person who was not aware that the Will dt. 14.03.1985 was not in favour of Parmanand but Hari Narain and hence in the belief that Parmanand is staking his claim on the basis of the Will dt. 14.03.1985 it was stated in the Will Ex.A1 dt. 24.05.1994 that there was an earlier Will in favour of Parmanand. This also assumes importance as it has come on record that Smt. Kadam Bai died on 25.05.1994 i.e. the very next day after the Will dt. 24.05.1994 is said to have been executed. It has also come on record that she was unwell and was under treatment of Dr. Ram Phool Meena. The respondents have not dispelled these suspicious circumstances nor brought evidence to show that the deceased was in a sound State of health at the time of execution of the Will on 24.05.1994. The respondents not having examined the treating doctor strengthens the suspicion that he may not have supported the respondent. Thus on this account the Court is entitled to draw an adverse inference against the respondent.

33. It can safely be presumed that the testator having executed an earlier Will would know in whose favour it had been executed and not give a wrong name to the scribe while dictating the Will on 24.05.1994.

34. It thus gives rise to the suspicion that the Will was not dictated by the deceased but was written by some one who presumably was not aware of the true facts. The second Will Ex.A1 is admittedly written on the stamp paper which was bought on 24.05.1994 itself by the deceased Smt. Kadam Bai whereas the deceased was not in any condition to go to purchase the stamp. The deceased was admittedly under the treatment of Doctor Ramphool Meena who could have deposed and thrown some light about the condition of the deceased. The said witness not having been examined by the respondent, as the burden was upon the respondent to show that the deceased was in a fit condition to go to purchase the stamp and also execute the Will dt. 24.05.1994 just a day before her death (i.e. 25.05.1994) as she was admittedly 87 years of age at that time. Moreover if the deceased intended to execute a Will (Vasiyatnama) the endorsement on the back of the stamp made by the Stamp Vendor would have been shows that the stamp paper was purchased for preparation of a Will whereas it was purchased for executing a power of attorney and not a Will. These suspicious circumstances therefore which have been pointed out would in the facts and circumstances create a doubt about the execution of the Will dt. 24.05.1994 in favour of the respondent by the deceased Smt. Kadam Bai, a lady who was 87 years of age and on her last leg of life and died the very next day on 25.05.1994. In the facts and circumstances I am inclined to agree with the submission of the learned Counsel for the appellant that the Will Ex.A1 dt. 24.05.1994 is surrounded by suspicious circumstances and can not be held proved to be executed by the deceased.

35. I would therefore partially allow the appeal and set aside the judgment of the learned District Judge granting the probate in favour of the respondent.

36. In the result while holding that the application submitted by the applicant-appellant was liable to be dismissed as he had no locus standi to file the same, the claim of the respondent for grant probate based upon the Will dt. 24.05.1994 is also rejected in the light of the findings given above. The judgment dt. 06.09.1997 in favour of the respondent is also set aside.

37. There shall be no order as to costs.