

(1982) 05 DEL CK 0002

In the Delhi High Court

Case No : Letters Patent Appeal No. 49 of 1972

Rajinder Nath Sharma and Others

APPELLANT

Vs

Rani Chander Kanta and Others

RESPONDENT

Date of Decision : 25-05-1982

Acts Referred:

Citation : AIR 1982 Delhi 584 : (1982) 22 DLT 301

Hon'ble Judges : Rajinder Sachar, J; M.L. Jain, J

Bench : Division Bench

Advocate : Arun Mohan, G.C. Mittal and Santosh Chatterjee, for the Appellant;

Judgement

M.L. Jain, J.

(1) The facts of this appeal are that one Raja Fateh Singh of Sheikhpura (Pakistan)) who died sometime in 1930, left extensive properties in New Delhi, Karnal Simla, Haridwar and Varansi. He left behind two widows and son Raja Dhian Singh by Rani Mistri Devi. Raja Dhian Singh died on February 1, 1957. He left three widows and children from all of them. In a litigation between the heirs of Raja Fateh Singh, by decrees awarded by the Commercial Sub-Judge Delhi on April 18, 1962 and August 24, 1962, in Suit No 417 of 1959, another widow of Raja Fateh Singh, Rani Kripa Devi was awarded 1/10 share in the properties in dispute. It is alleged that Rani Kripa Devi executed a Will (Ex. P-I) on 2-6-1967 and presented it for registration on 6-6-1967. It was registered on 7-6-1967 by Hari Ghand Gaur (Public Witness 2). By the said Will she purports to have bequeathed her share in favor of four sons of her brother Shankar Lal and a servant S.Idhu Singh who has been in faithful service of the family for 32 years since the time of Raja Fateh Singh. The Will is alleged to have been drafted and prepared by advocate Krishan Gopal (Public Witness 3) and attested by Baljit Singh Tyagi (Public Witness 4) and Satyavir Singh Tyagi (Public Witness 5). It also bears an endorsement by the deceased in her own hand to which reference will be made later on. Rani Kripa Devi entered a local Nursing Home on 9-6-1967. She was operated for overaian tumor on 11-6-1967. She died on

12-6-1967. She was issueless.

(2) On 5-7-1967 the five legatees entered into an agreement (Ex. P-I) with Kala Wati daughter of Shankar Lal by which they agreed to give 1/6th share to Mst. Kala Wati out of 1/10th share of Rani Kripa Devi. On 22-8-1967, the legatees plus Mst. Kala Wati applied for probate, of the aforesaid Will. The probate was opposed by the heirs of Raja Dhian Singh led by Rani Ghander Kanta. The petitioners examined six witnesses while the opponents examined five witnesses. The learned single Judge by his order dated December 13, 1971 rejected the petition. He held that the Will was not proved and declined to go into the question whether Rani Kripa Devi had any title to the properties bequeathed. Hence this appeal.

(3) After the arguments were over in the appeal Mr. Arun Mohan on behalf of the appellants made an application under Order 41 Rule 27 read with Section 151 of the CPC praying for permission to lead additional evidence to prove the signatures and writings of the deceased Rani Kripa Devi on the alleged Will This application was opposed. According to Order 41 Rule 27 parties to an appeal are not entitled to produce additional evidence in the appellate court unless the lower court has refused to admit evidence which ought to have been admitted or the evidence was not within the knowledge or could not after the exercise of due diligence be produced at the time when the decree appealed against, was passed or the appellate court requires such evidence to enable it to pronounce judgment or for any other substantial cause. It is not the case of the appellants that the evidence which is now sought to be adduced was not admitted in evidence by the court below. Nor is it their case that they could not even after exercise of due diligence prove her signatures and handwriting by other writings. We do not think that it is necessary to allow this evidence to enable us to pronounce the judgment. Nor do we find any substantial cause for acceding to this request. The only cause shown by the appellants is that Hans Raj Sawhney, their advocate in the court below had advised them that since the Will was registered and it was also established that there has been litigation between the deceased and the objectors, and the Will bore the signatures on each page as well as the writing of the deceased and thumb impression also, the evidence on record was sufficient and fool proof and no further evidence was necessary. In reply on behalf of the respondents, it is stated that the petitioners were represented by two advocates of the eminence of Mr. Sawhney and Mr. Radhe Mohan Lal and that they would not have given any irresponsible or improper advice to their clients. Mr. Radhe Mohan Lal did not move this court for adducing additional evidence while moving the appeal. It was only at the time of arguments that Mr. Arun Mohan advocate of the appellants realised that some more evidence should have been led to prove the Will and made this belated application. It may be noticed that Sadhu Singh had died on 21-9-1977. His legal heirs were even not brought on the record and it was in order to take advantage of his disappearance from the scene, that the appellants want to produce fake evidence. We have considered this matter and upheld the objections to the applications, and do not think that

any sufficient cause has been disclosed for grant of permission for additional evidence at this stage. The application for additional evidence is Therefore, rejected.

(4) The burden of proving the sound state of mind of the maker of the Will and execution and attestation etc., of the Will, is on its propounder. It is also further necessary for the propounder to dispel all suspicions which surrounded the Will such as genuineness of the signatures of the testator, condition of the testator's mind, the dispositions made in the will being unnatural, improbable or unfair in the light of relevant circumstances or there might be other indications in the will to show that the testator's mind was not free. If the propounder himself takes prominent part in the execution of the will which confers a substantial benefit on him, that is also a suspicious circumstance to be taken into account and the propounder is required to remove the doubt by clear and satisfactory evidence. All such legitimate suspicions should be completely removed before the document can be accepted as the last will of the testator. The court is not confined only to the manner in which the witnesses have deposed but it can look into the surrounding circumstances and probabilities so that it may be able to form a correct idea of the trustworthiness of the witnesses But if a will is a registered one, there is a presumption of genuineness hut it will not by itself be sufficient to dispel all suspicions without submitting the evidence of the Registrar to close examination. If his evidence reveals that the registration was made in such a manner that it was brought home to the testator that the document of which he was admitting execution was a will disposing of his property and thereafter he admitted it execution and signed it in token thereof. The registration will dispel the doubts as to the genuineness of the will but if the evidence as to registration shows that it was done in a perfunctory manner, that the officer registering the will did not read it over to the testator or did not bring home to him that he was admitting the execution of a will or did not satisfy himself in some other way (as for example by reading the will) that the testator knew that it was a will the execution of which he was admitting, the fact that the will was registered would not be of much value. Registration may take place without the executant really knowing what he was registering. In this case, the natural heirs have been excluded to the advantage of the profounder out of whom Sadhu Singh did not even care to enter the witness box even when he was alive. The agreement with Mst.Kala Wati further creates a serious suspicion in the mind of the court. There is no medical evidence on record to show the condition of the mind of the deceased at least on the date she entered the Nursing Home. It was a private Nursing Home where two surgeons attended on her, one was even summoned but was given up. It is also difficult to believe that in the severe heat of June Rani Kripa Devi had to go to the Sub-Registrar's Office for 2/3rd days while the woman like her could easily pay the requisite fee for calling the Registrar to her house. The learned trial Judge found the evidence of the Sub-Registrar Mr. Gaur quite unsatisfactory. He was Sub- Registrar officiating only for a week. The Will was not presented to him personally and he could not even say

whether the executant was a young lady. He solely depended upon the evidence of advocate Krishan Gopal because he has been appearing before him in respect of registration of other documents as well. He did say that he read the whole of the document and explained the main points to Rani Kripa Devi, but he did not care if any of her relatives accompanied and had identified her. He did not care to ask Krishan Gopal as to how he knew the lady. In these circumstances, the manner in which the Sub-Registrar acted can be described only perfunctory and the presumption of genuineness arising out of registration of a Will cannot be applied to this case. As regards the evidence of Krishan Gopal advocate the learned single Judge after examination of his evidence condemned not only his evidence but even his conduct as a person belonging to the noble profession of law. We are in respectful agreement with the remarks of the learned fudge. The advocate even admitted that it was a part of his profession to identify such persons who were known to him and to charge fees from them for such identification. His acquaintance with Rani Kripa Devi was an extremely old and causal one. He deposed that be knew her from Sheikhpura (Pakistan) prior to the partition of India. He had once seen her at the house of Rai Bahadur Narain Singh of Shujabad who was his client. He never had any occasion to visit Rani Kripa Devi thereafter. He did not even know where she lived in Delhi. He later on disowned that Rai Bahadur Narain Singh was his client. He had only conducted a case of his servant. He claimed that he had drafted the will but he did not know as to who had approached him for the purpose. He did not know whether he gave a draft of a regular Will or some points only, but later on admitted that he had given only detailed notes to the person who had taken his advice and thereafter that person brought the document duly typed to him. This evidence is so thoroughly slipshod and unworthy of credit that no court will be inclined to act upon it. The learned counsel for the appellants invited our attention to *Kanwar Sain v. State*, 1976 Rlr 90, which observed that identification of an executant by a professional identifier is by itself no material defect. But these observations do not render any assistance to the appellants in supporting the evidence of Krishan Gopal because in *Kanwar Sain* (supra) the learned Judge had found that the will was the off-spring of the old lady's own volition and not the record of some one else. Baljit Singh Tyagi (Public Witness 4) an attesting witness deposed that Rani Kripa Devi signed the will in this presence and he signed it as a witness in the verandah of the Sub-Registrar's office. He stated that she was in a fit state of mind. The will was not drawn up in his presence. He saw it for the first time only in the Sub- Registrar's office on 3-6-1967. His testimony too is of doubtful character because he was a friend of Sadhu Singh and was introduced to Rani Kripa Devi by Sadhu Singh. Satyavir Singh Tyagi (Public Witness 5) deposed that the will was executed by Rani Kripa Devi and he too signed it as an attesting witness. He came to know Rani Kripa Devi through Baljit Singh Tyagi because he accompanied him when Baijit Sing went to Rani Kripa Devi's house. This evidence is equally perfunctory and unsatisfactory. The further circumstance of suspicion on which the learned trial Judge discarded the evidence of these two witnesses was that the proponent Rajinder Nath (Public Witness 6) deposed that

before entering the operation theatre the deceased had given a chit authorising him to receive a will from Sub-Registrar's office. He came to know of the execution of the will only when the chit was given to him. He stated that no counsel by the name of Krishan Gopal came to see Rani Kripa Devi. The learned trial Judge considered this evidence of Rajinder Nath (Public Witness 6) as unnatural. He also doubted his evidence because of his financial position and the way Kala Wati was sought to be placated. We agree with his assessment. Satyawati (DW 1) widow of Raja Dhian Singh visited Rani Kripa Devi in the second or third week of May, 1967 and found her completely bed ridden with her uterus bleeding. Sadhu Singh who used to attend her and was one of the legatees did not enter the witness box to prove the state of health and mind of the deceased. Swam Singh (RW 4) who was a driver of Raja Dhian Singh, deposed that Rani Kripa Devi was in a state of drowsiness before she was removed from the house and she did not even respond to his greetings. Rani Ghander Kanta widow of Raja Dhian Singh (RW 4) had visited the deceased in March, 1967 and found her seriously ill. Abhilashi (RW 1) a friend of Raja Dhian Singh went to see her in May, 1967 and found her unconscious. Dina Nath (RW 2) said the same thing. Considering all the circumstances the learned single Judge concluded that Rani Kripa Devi was a woman of advance age of 75 and had been badly ailing when she supposed to have made the will. We are in respectful agreement with these finding and hold that at that time of the execution of the will, Rani Kripa Devi was not in possession of her senses and was not of sound disposing mind. The evidence of Baijit Singh Tyagi and Satyavir Singh Tyagi is not at all sufficient to dispel the doubts which the circumstances in which the will was executed have given rise to. Their evidence cannot be considered to be reliable and independent. The petitioners have thus failed to prove that the testator was of sound disposing mind at the time of the execution of the will. Her signatures have not been proved by comparison of her other signatures and writing and the evidence of the Sub-Registrar was most perfunctory. There were other relatives of the deceased but none of them have claimed about the execution of the will. It is true that no attempt was made to disprove the thumb impression put on the back of the will at the time of its registration, but then it was the duty of the caveators and not of the proffunder to prove that the thumb impression was that of the deceased. Having discarded the will, the learned single Judge did not and rightly so, feel the necessity of examining the challenge to the authority and power of the deceased to dispose of the properties.

(5) The learned counsel for the appellants urged that the opponents have challenged the will on the ground of fabrication and collusion, but have failed to prove the allegation. Relying upon *Sard Sila Dasi v. Narinder Nath Pal* (1928) 2nd 56 Gal. 55 and *Ajit Chandra Majumdar Vs. Akhil Chandra Majumdar*, he maintained that it was the duty of the caveators to give particulars of their allegations but no particulars have been given by them to suggest that the testator was not fully conscious of what she was doing and that the will was a

forgery prepared in a conspiracy of the legatees. We do not think that these cases can be of any help to the learned counsel because the will is shrouded in mystery and the legal heirs cannot be deprived of their inheritance on the basis of the present will. The learned counsel again referred us to Kanwar Sain (supra) to urge that the will cannot be suspected merely because the proponents were the exclusive beneficiaries because the deceased could be moved by persuasion, appeals to affections or ties of kindred or to a sentiment of gratitude at past services, or pity for further destitution or the like these are all legitimate means and may fairly be pressed on the testator. We are unable to uphold this contention because it is a matter of evidence whether the deceased made the will on account of any such considerations. No such evidence was led. Rajinder Nath deposed that the old lady had to live in a tent and his only service to her was to receive the chit in order to collect the will. In Seth Beni Chand (Since Dead) Now by L.Rs. Vs. Smt. Kamla Kunwar and Others, a will executed in favor of the grandson excluding the son was no doubt upheld by the Supreme Court but then it had found that the testatrix was in sound disposing state of mind and the son's behavior was far too unfilial and remorseless to find a place in her affections. It is true that in this case the legal heirs had challenged her legal status as the widow of Raja Fateh Singh and there has been litigation earlier as well, but all this is no sufficient for the court to hold that she wanted to disinherit them and give the property to the children of her brother for no rhyme or reason. Nothing was stated in the will respecting them except in case of the servant Sadhu Singh who did not care to enter the witness stand.

(6) The learned counsel made a new argument here. Relying upon Sant Sila Dass (supra) and Ajit Chandon (supra) he pointed out that writing "A" at the end of the typed part of the will is a holograph of Rani Kripa Devi herself and that raises a presumption in favor of the genuineness of the will because the soundness of mind of the testator in physically writing out her own will is more apparent here than where her signatures alone would appear on a will either typed or scribed by some one else. But what we find is that the portion "A" alleged to have been written in the hand of the testatrix does not amount to a will. Moreover, it was not proved by any independent evidence except that of the witnesses in respect of which we have already made our comments in full to show that they could not be believed. Even the identity of the testatrix is doubtful. The alleged, holograph only says that she has been writing in full possession of her senses without instruction or influence and out of her own pleasure so that it may provide proof when any occasion arises. But there is no bequest in this writing.

(7) Having considered all the circumstances of the case, we find no reason to interfere with the findings of the learned single Judge and we dismiss this appeal with costs.