
(1998) 02 P&H CK 0005

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 758 of 1987

Shiv Narain

APPELLANT

Vs

Bhagat Ram and Others

RESPONDENT

Date of Decision : 24-02-1998

Acts Referred:

Succession Act, 1925 — Section 276

Citation : (1998) 3 CivCC 157 : (1998) 119 PLR 464 : (1998) 2 RCR(Civil) 123

Hon'ble Judges : N.C. Khichi, J;Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : Harbhagwan Singh and P.S. Rana, for the Appellant; Gopi Chand, for the Respondent

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, J.—The estate of Ram Dhari Mal provides the bone of contention. The learned Single Judge having accepted the petition filed by Bhagat Ram, his brother-Shiv Narain has filed the present Letters Patent Appeal. A few facts may be noticed.

2. Ram Dhari Mal is alleged to have executed a will on February 6, 1978. He expired on May 8, 1978. He had left behind three sons-Bhagat Ram, Shiv Narain and Sat Pal, a daughter-Pisto Devi and a widow Shanti Devi. In April, 1986, Bhagat Ram the present respondent filed the petition u/s 276 of the Indian Succession Act for the grant of probate of the will.

3. The petition u/s 276 was contested only by the two sons-Shiv Narain and Sat Pal. The daughter and the widow did not put in appearance. The execution of the will was denied. It was also alleged that the property was ancestral and as such, Ram Dhari Mal had no right to execute the will.

4. On the pleadings of the parties, the following two issues were framed:-

i) Whether Ram Dhari Mal deceased had executed a valid will dated 6th February,

1978? OPP

ii) Whether the properties bequeathed under the will were coparcenary? If so, its effect? OPR.

5. After examining the evidence, the learned Single Judge found that the execution of the will. Exhibit P.1 was duly proved. The so-called suspicious circumstances were imaginary. Thus, Issue No. 1 was decided in favour of the petitioner-Bhagat Ram. With regard to Issue No. 2 it was held that no argument was raised and no evidence had been produced. Thus, the petition was allowed with costs. A direction for the issue of probate was given.

6. Aggrieved by the judgment of the learned Single Judge, respondent-Shiv Narain alone has filed the present appeal.

7. Mr. Harbhagwan Singh, learned counsel for the appellant has contended that both the attesting witnesses to the will are related to respondent-Bhagat Ram. Ram Dhari Mal was living in Safidon. However, the will appears to have been executed in Delhi. It is written in English and signed in "Landas". Still further, according to the learned counsel, the will had been produced for the first time in the probate proceedings which were initiated in the year 1986. These circumstances were enough to show that the will was not a genuine document. Thus, the finding recorded by the learned Single Judge deserves to be reversed. Secondly, the learned counsel submitted that the will having not been attached with the petition u/s 276, the Court has erred in granting the probate. The claim made on behalf of the appellant was controverted by Mr. Gopi Chand, who appeared for the respondents.

8. First -- Is the will a genuine document? It is Ex. P-1 on the record. It is type written. It consists of only one page. It purports to have been signed by Ram Dhari Mal. It has been attested by two persons viz. Radhey Shyam Singhal and Jai Bhagwan Goel. They had appeared as PWs 2 and 3 respectively. They have proved the execution of the will. There is nothing to suspect their testimony. Thus, the finding recorded by the learned Single Judge that the will has been duly proved, is absolutely correct and is affirmed.

9. It is undoubtedly correct that the appellant had taken up the position that Ram Dhari Mal "did not execute any will". However, in cross-examination, he had admitted that he had "got a shop under the will and a house". Still further, he had admitted that "the said houses has been sold by us as the same was in our name". A perusal of the will shows that the house and the shop had in fact been given to Shiv Narain and Sat Pal. Thus, it is clear that the appellant himself had got a part of the property under the will. He was one of the beneficiaries. He had even sold the property which he had got from his father. Yet, he chose to take up the position that the will is not a genuine document. His claim cannot be accepted.

10. Learned counsel for the appellant was repeatedly asked-

" (i) How was the property managed from 1978 to 1986 when the will was produced in the probate proceedings?

(ii) When was the property sold by the appellant? Was it sold prior to 1986? Learned counsel gave no answer. Nothing was pointed out to even suggest that the appellant was the owner of the house which he had sold without deriving the title under the will. Apparently, the house was given to him by his father and he could sell it only because he had got the title under the will.

11. Mr. Harbhagwan Singh contended that the will had been produced after an inordinately long delay of eight years. This, according to the learned counsel was indicative of the fact that it was not a genuine document.

12. The contention cannot be accepted. Bhagat Ram-PW-1 has categorically stated that the copy of the will had been produced in earlier proceedings. The attendant circumstances viz. the fact that the appellant himself had got the house under the will and that he had even sold it, clearly bely the suggestion that the will had not been executed. The mere fact that the attesting witnesses are related to respondent-Bhagat Ram or that the will was executed in Delhi, is no ground to discard it. It was not disputed that the testator was in Faridabad with his son-Bhagat Ram. The evidence shows that he had gone to Delhi with his son and the will was prepared in the Tees Hazari Courts. Taking the totality of circumstances into consideration, we cannot accept the contention that the will is not a genuine document. Resultantly, the finding of the learned Single Judge on Issue No. 1 is affirmed.

13. It was then contended that the will having not been produced with the petition u/s 276, the learned Single Judge could not have granted the probate.

14. This contention cannot be accepted. Firstly, no such plea has been raised in the written statement filed by the appellant. Secondly, a copy of the will duly attested by Mr. Gopi Chand, Advocate, for the respondent, is on the Paper Book. A pure question of fact cannot be allowed to be raised for the first time at the stage of the hearing of the Letters Patent Appeal. Thirdly, an application for probate is primarily for permission to perform a duty created by a will or for recognition as a testamentary trustee. The execution has been duly proved. The probate has been granted. We have confirmed the finding of the learned Single Judge with regard to the execution of the will. In this situation, even if it is assumed that the will had not been produced with the petition, the court cannot refuse to grant the probate. The provision regarding the production of the will cannot be said to be mandatory.

15. No other point has been raised.

16. In view of the above, there is no merit in this appeal. It is consequently, dismissed. In the circumstances, there will be no order as to costs.