
(2017) 08 DEL CK 0060

In the Delhi High Court

Case No : 55 of 2008

SURENDER RANA

APPELLANT

Vs

STATE AND ORS

RESPONDENT

Date of Decision : 21-08-2017

Acts Referred:

Succession Act, 1925, Section 299, Section 276(1)(c) - Appeals from orders of District Judge -
Petition for probate
Evidence Act, 1872, Section 114(e)

Citation : (2017) 08 DEL CK 0060

Hon'ble Judges : Valmiki J.Mehta

Bench : SINGLE BENCH

Advocate : Vijay Kishan

Judgement

1. This first appeal is filed under Section 299 of the Indian Succession Act, 1925 impugning the judgment of the trial court dated 22.10.2007 by which the trial court has granted to the respondent no.2 herein, petitioner in the trial court, letters of administration of the Will dated 19.9.2000 executed by Sh. Nand Lal, the father.

2. The facts of the case as pleaded in the petition in the trial court, filed by the respondent no.2/Sh. Sanjay Rana, were that his father Sh. Nand Lal died on 20.1.2001. Sh. Nand Lal had prior to his death left behind his Will dated 19.9.2000 and which was duly registered with the Sub-Registrar. By the Will the deceased testator bequeathed his property bearing no. 4249-51, Tail Mandi, Pahar Ganj, New Delhi to his one son i.e the respondent no. 2 herein and his widow Smt. Nirmal Rana. The petition in the trial court was originally filed by Smt. Nirmal Rana widow of Sh. Nand Lal along with Sh. Sanjay Rana, the son of Sh. Nand Lal, however after the death of Smt. Nirmal Rana, she was deleted from the array of the two petitioners because by the subject Will the property was bequeathed half to the widow Smt. Nirmal Rana and half to the son Sh. Sanjay Rana with the half belonging to the mother also falling to Sh. Sanjay

Rana on the death of Smt. Nirmal Rana. The testator Sh. Nand Lal at the time of his death left behind his widow Smt. Nirmal Rana and one son the petitioner in the court below Sh. Sanjay Rana (respondent no.2 herein), two more sons Sh. Surender Rana (appellant herein), Sh. Navin Rana (one other objector who has chosen not to file the appeal against dismissal of his objections and granting letters of administration) and one daughter Smt. Hema Chadha (respondent no.3 in the court below and who gave her no objection to the grant of probate/letters of administration in favour of two petitioners Smt. Nirmal Rana and Sh. Sanjay Rana). Therefore, on the one side were the widow, one son and one daughter of the deceased testator Sh. Nand Lal and on the other side were two other sons who had filed objections against the subject Will.

3. To prove the Will the petitioners in the court below led evidence of six witnesses. PW-1 was the petitioner no.1 Sh. Sanjay Rana being the respondent no.2 herein. PW-2 was Sh. Rajesh Rana one of the attesting witness to the Will. PW-3 was Sh. A. Rehman, a UDC from the office of the Sub-Registrar to prove the registration of the Will. PW-4 was Dr. Arun Kumar Yadav from RBTB Hospital to show that the deceased Sh. Nand Lal had been discharged for a few hours from the hospital on 21.9.2000. PW-5 Smt. Kanta Chadha and PW-6 Smt. Bimla Mehta were the two sisters of the deceased testator Sh. Nand Lal.

4. Both the objectors being the appellant/Sh. Surender Rana and the respondent no.3 herein Sh. Navin Rana stepped into the witness box to prove their objections, however, they did not lead any evidence of any independent third party witness.

5. Trial court has held that the subject Will was proved as it was duly executed and attested by the deceased testator Sh. Nand Lal and two attesting witnesses. For holding that the subject Will has to be accepted, the trial court has given the following reasoning, and which I adopt and agree with:- (i) The Will was duly proved to have been executed and attested, both by the deposition of the attesting witness Sh. Rajesh Rana who deposed as PW-2, and also by the deposition of the petitioner no.1 in the trial court Sh. Sanjay Rana as PW-1. These two witnesses deposed and proved the execution and attestation of the Will being signed by the testator in presence of the attesting witnesses and the attesting witnesses signing in the presence of the deceased testator.

(ii) The deceased testator Sh. Nand Lal was of sound disposing mind although the deceased testator was suffering from TB as also Asthama inasmuch as these diseases which the deceased testator was suffering from were not diseases of the mind and the evidence was led by the petitioners in the court below that the deceased testator was of sound disposing mind at the time of making of the Will. The conclusion with respect to the deceased testator being in sound disposing mind has been buttressed by the trial court by observing that the Will stands duly registered with the photograph of the deceased testator on the Will and the fact that the deceased testator died more than three months after execution and attestation of the Will i.e there was a period of about three months between

execution of the Will and the death of the testator.

(iii) There was nothing unnatural in the Will having been executed in favour of only one son Sh. Sanjay Rana and the widow Smt. Nirmal Rana, inasmuch as the appellant being the one other son had separated from the family after his marriage and after his marriage Sh. Nand Lal and his wife Smt. Nirmal Rana had never visited the appellant, and in fact appellant was not even invited to the marriage of his own real sister Smt. Hema Chadha/respondent no.4. Sh. Surender Rana/appellant had also separated from the business with his father way back in the year 1989. The other son being the other objector Sh. Navin Rana, respondent no.3 herein, was settled since his age of 23 years in USA and he was not living in India since his marriage. Not only Sh. Sanjay Rana was found to be living with his parents being deceased Sh. Nand Lal and Smt. Nirmal Rana, but also that it was Sh. Sanjay Rana who was taking care of his parents and was also incurring expenditure for medical purposes of the deceased testator.

(iv) Not too much should be made out on account of certain discrepancies existing in the statements of PW-1 Sh. Sanjay Rana and PW-2 Sh. Rajesh Rana with respect to different dates of execution and registration of the Will being deposed as to 19.9.2000, whereas the date of execution and registration of the Will was 21.9.2000, inasmuch as, the Will is found to have been duly registered before the Sub-Registrar on 21.9.2000 and therefore once there was one same date of execution and registration of the Will then this date should be taken as 21.9.2000. Any doubt with respect to registration of the Will is removed on account of photographs found existing of the deceased testator on the Will, with the fact that the witness from the Hospital Dr. Arun Kumar Yadav who deposed as PW-4 deposed that Sh. Nand Lal had been discharged from the hospital for a few hours on 21.9.2000 i.e on the date of execution and registration of the Will.

In my opinion, there is another reason for holding that the Will was duly executed and registered on 21.9.2000 inasmuch as, as per Section 114(e) of the Indian Evidence Act, 1872 courts have to draw a presumption with respect to judicial and official acts being properly performed, and therefore, this Court has to draw a presumption in favour of execution and registration of the Will as the Will is found to be duly registered and proved through the witness from the office of Sub-Registrar Sh. A. Rehman (PW-3) thus showing that the official acts were duly performed by the Sub-Registrar at the time of registration including putting questions on the execution of the Will and its attestation to the testator and to the attesting witnesses of due execution and attestation of the Will.

6. In my opinion, the aforesaid reasons are valid reasons for the trial court to have held that the Will stood duly proved to have been executed and attested and thus proved as Ex.PW2/1.

7. (i) Learned counsel for the appellant firstly argued that the petition seeking letters of administration was liable to be dismissed on account of violation of the provision of Section 276(1)(c) of the Indian Succession Act inasmuch as this

section provides an averment being required to be made in the probate petition of due execution and attestation of the Will but in the petition it is found that there was no averment made that the deceased testator had duly executed the Will. (ii) In my opinion, the procedural argument raised by the appellant has no substance because even if the procedural requirement was not complied with by the petitioners, however, the deficiency stood removed once depositions were recorded of both the PW-1 and PW-2 with respect to due execution and attestation of the subject Will. This argument of the appellant is therefore rejected.

8. (i) It was then argued by the appellant that the attesting witness has not deposed to the due execution and attestation of the Will and that otherwise also there is no deposition to the due execution and attestation of the Will and therefore, the petition filed before the trial court had to be dismissed. (ii) I cannot agree with this argument firstly because PW-1 Sh. Sanjay Rana, respondent no.2 herein, has specifically deposed with respect to the testator and the attesting witnesses signing in the presence of each other in his deposition recorded on 21.8.2003. Secondly, even in the statement of the attesting witness PW-2 Sh. Rajesh Rana it is specifically deposed with respect to the testator putting his signatures and thumb marks at as many as 8 places in the Will and that the attesting witness Sh. Rajesh Rana had also put his signatures at two points on the Will. The attesting witness Sh. Rajesh Rana PW-2 has further deposed that even before the Sub-Registrar the testator had put his signatures and he along with the other attesting witness Sh. P.K. Singh had put his signatures on the Will. The said statement of the attesting witness has to be read in a logical manner in view of Section 71 of the Indian Evidence Act and which provides that a Will can be proved even if one attesting witness is not summoned or the attesting witnesses deny the execution and attestation of the Will showing that the proving of the Will is not left wholly and solely to technically and strictly reading the deposition of the attesting witnesses of the Will, and therefore, when the attesting witness has in fact deposed, such deposition has to be read in a complete manner and it is seen that the attesting witness PW-2 Sh. Rajesh Rana has duly deposed with respect to putting of signatures on the Will by the testator and also putting of signatures on the Will by two attesting witnesses and thus the requirements of law are satisfied. I therefore reject the argument that the petitioners in the trial court failed to prove the due execution and attestation of the Will.

9. (i) On behalf of the appellant thereafter two connected arguments were raised with respect to discrepancies in the statements of PW-1 Sh. Sanjay Rana and PW-2 Sh. Rajesh Rana with respect to the date of execution and registration of the Will being 19.9.2000 whereas the Will is found to have been actually executed and registered on 21.9.2000. To buttress this argument counsel for the appellant also argued that in the Will the place for putting of the date was left as blank when the Will was typed and it is only in hand that the date of the Will has been written as 19.9.2000. It is accordingly argued that there are suspicious

circumstances with respect to the execution and attestation of the Will, and therefore, the petition seeking letters of administration was bound to be dismissed. (ii) In my opinion, the argument urged on behalf of the appellant seemed to carry weight on the first blush, inasmuch as, the date of the Will written in hand is 19.9.2000 and this was also the date of execution and registration of the Will as deposed to by both PW-1 (originally) and PW-2, whereas the Will has been found to be executed and registered on 21.9.2000 and not on 19.9.2000, however it is seen that Sh. Nand Lal who was admitted to the hospital from 1.9.2000 to 19.11.2000 was in fact discharged for a few hours on 21.9.2000 as proved by the deposition of Dr. Arun Kumar Yadav PW-4 from RBTB Hospital. No doubt it is only after the statement of Dr. Arun Kumar Yadav was recorded on 19.12.2003, that the petitioner Sh. Sanjay Rana in his statement recorded later on 9.11.2004 stated that the date of registration of the Will should not be taken as 19.9.2000 but should be taken as 21.9.2000, but once there is admittedly only on one day that the Will was executed and registered, then the mistake of dates in the depositions of PW-1 and PW-2 should not be given that much weight to reject the Will which is natural as per the facts and circumstances of the case as found.

(iii) It seen that the Will contains the date of 19.9.2000 at two places in hand. It is obviously for this reason that confusion has occurred and mistakes had taken place in the deposition of the date of the execution and registration of the Will. Whereas the date of execution and attestation of the Will was 21.9.2000, it was only on account of hand written dates being filled in the blank spaces in the Will being written as 19.9.2000, and that factually there was only one day/date of execution and registration of the Will, hence the witnesses PW-1 and PW-2 Sh. Sanjay Rana and Sh. Rajesh Rana deposed this date wrongly as 19.9.2000 whereas this date is 21.9.2000. Obviously and clearly a mistake/wrong of deposition as to the date happened because the date of 19.9.2000 was written by the second attesting witness Sh. P.K. Singh, Advocate who had drafted the Will as per the instructions of the deceased testator Sh. Nand Lal. However, once the Will is shown to have been duly registered before the Sub-Registrar on 21.9.2000, then in my opinion, the statement of the attesting witness as PW-2 as also PW-1 that the Will was executed and registered on one date should be read and understood to mean that the one date which was talked of by the witnesses PW-1 and PW-2 was 21.9.2000 and not 19.9.2000. At the cost of repetition it is noted that the most relevant aspect is that it is only on one date that the Will was executed and registered being 21.9.2000 and confusion had occurred on account of the blank spaces left which were filled in hand, and therefore, the depositions of the witnesses of the date of the execution and registration of the Will deposed wrongly of 19.9.2000 whereas the endorsements from the Sub-Registrar clearly shows that the Will was registered on 21.9.2000 and since the Will was executed and registered on the same date, therefore, the date of execution should also be taken as 21.9.2000.

(iv) A civil case is decided on balance of probabilities and in view of the

presumption to be drawn under Section 114(e) of the Indian Evidence Act with the fact that there is a photograph of the deceased testator on the original Will as also in the copy of the registered Will before the Sub-Registrar showing that the Will was registered on 21.9.2000, and this date of 21.9.2000 is also the date of discharge of the deceased testator Sh. Nand Lal from the hospital on 21.9.2000 for a few hours, in my opinion, therefore no conclusive capital can be made by the appellant with respect to the confusion of the dates of execution and registration of the Will being different date of 19.9.2000 as written in the Will and the different date of 21.9.2000 on which date the Will was registered and hence also executed on the same date.

(v) I therefore reject the argument urged on behalf of the appellant especially because not only the Will is duly registered but also the fact that there is nothing unnatural in the Will because in the Will the deceased testator has given his property to his son who stayed with him throughout his life and also took care of him as also his mother Smt. Nirmal Rana and spent money for medical expenses and which aspects are buttressed by the fact that the two objectors being the two sons Sh. Surender Rana (appellant) and Sh. Navin Rana (respondent no.3) had separated from the family long back and were living separately from the deceased testator.

10. It was next argued by the appellant that since it is admitted by PW-2 in his cross-examination on 21.8.2003 that the deceased testator was very sick and weak, and therefore clearly it should be held that execution and registration of the Will on 21.9.2000 was not by the testator in sound disposing mind. This argument however is without merit, and has been rightly rejected by the trial court by observing that the deceased testator died more than three months after making of the Will and in fact in the three months the deceased testator had in fact taken part in business. Once therefore the Will is proved to have been duly executed and registered, then there was very heavy onus upon the objectors to lead sufficient credible evidence with respect to lack of sound disposing mind but the objectors except giving self serving depositions have led no independent evidence, much less documentary evidence, to show that the deceased testator was not of sound disposing mind when the subject Will was executed. This argument of the appellant is therefore rejected.

11. (i) Learned counsel for the appellant then argued by placing reliance upon the judgment of the Supreme Court in the case of Adivokka and Ors. Vs. Hanamavva Kom Venkatesh (deceased by LRs.) and Anr. AIR 2007 SC 2025 to argue that the registration of the Will would take more than two hours as held by the Supreme Court and therefore once the attesting witness PW-2 Sh. Rajesh Rana deposed that typing, execution and registration of the Will was completed in about 1 1/2 hours, therefore, suspicious circumstances exist for this Court to hold that the Will was not duly executed and registered. (ii) In my opinion, appellant can take no benefit of para 17 of the judgment of the Supreme Court in the case of Adivokka (supra) because in the facts of that case Supreme Court

made general observations of time of about two hours for being taken, however, it is not the law laid down by the Supreme Court in the case of Adivekka (supra) that for every execution and registration of the Will two hours must necessarily be taken. It is also relevant to note that in Adivekka's case (supra) the issue was of the Will being registered after the office hours because execution of the Will was completed by about 4.30 PM and whereafter it was taken for registration. In my opinion therefore reliance placed by the appellant upon the judgment in the case of Adivekka (supra) is misconceived and is therefore rejected.

12. (i) Finally, the appellant argued that petitioner Sh. Sanjay Rana had actively participated in making of the Will, and he was also a beneficiary and executor of the Will, and therefore, in terms of various judgments of the Supreme Court once propounder actively participates in making of the Will of which he is the beneficiary, such a Will should be held to be shrouded in suspicious circumstances and set aside. (ii) In my opinion this argument urged on behalf of the appellant is also liable to be rejected because the issue of suspicious circumstances existing is a question of fact depending upon the facts of each case. The law that when a propounder participates in making of the Will and thus suspicious circumstances exist is not an absolute statement in fact and law and this statement is only for the purpose of deciding as to whether by the propounder taking active part in making of the Will the thinking of the testator was overwhelmed and he was not made to think naturally i.e the Will is not a natural outcome of a natural mind of the testator. In the present case, it is seen that there is nothing unnatural about the Will, inasmuch as, both the objectors were living separately from the family not only for residence but also for their business, with one objector being the respondent no. 3 herein having settled in USA since 1988 i.e around 12 years prior to the death of the testator and other objector being the appellant had separated after his marriage and the parents had never visited him ever after his marriage and in fact the appellant/objector was not even called to the marriage of his own/real sister Smt. Hema Chaddha. Also, it was the petitioner Sh. Sanjay Rana/respondent no. 2 herein who was not only living with his parents, but he was also taking care of them and incurring medical expenses for the treatment of his father/deceased testator. In my opinion, therefore it cannot be held in the facts of the present case that simply because the propounder has taken active part in making and registration of the Will, the Will is necessarily to be held to be shrouded in suspicious circumstances for the same to be rejected. This argument of the appellant is also therefore rejected.

13. In view of the above discussion, I do not find any merit in the appeal and the same is hereby dismissed.