

Neela Singh Vs. Mahagopal Singh and Others

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SooperKanoon Citation : sooperkanoon.com/436285

Court : Andhra Pradesh

Decided On : Apr-03-2000

Reported in : 2000(3)ALD572; 2000(3)ALT289

Judge : I. Venkatanarayana, J.

Acts : [Evidence Act, 1872](#) - Sections 68; [Indian Succession Act, 1925](#) - Sections 63

Appeal No. : CCCA Nos. 38 and 53 of 1986

Appellant : Neela Singh

Respondent : Mahagopal Singh and Others

Advocate for Pet/Ap. : Mr. G. Ramesh Sagar and;Mr. Keerthi Prabhakar, Advs.

Judgement :

1. Both the appeals are directed against the judgment and decreedated 31st December, 1985 passed in OS No. 132 of 1984 on the file of the Additional Chief Judge, City Civil Court, Hyderabad. The said suit was decreed for partition of plaint schedule properties into five equal shares and for allotment of two such shares to the plaintiffs. Aggrieved by the said judgment and decree the 1st defendant preferred AS No.38 of 1986. The plaintiffs also preferred AS No.58 of 1986 having been aggrieved by the judgment and decree granting 2/5th share to the plaintiffs instead of 2/3rd share and also challenging some findings given in the said

judgment which are adverse to them. As both the appeals arise out of the same judgment, both the appeals are clubbed and heard together and a common judgment is being pronounced for both the appeals.

2. For the sake of convenience the parties to these appeals will be referred to in accordance with their ranking in the suit before the trial Court.

3. Facts, as disclosed by the plaint, are as set out hereunder :

Plaintiffs and 1st defendant are the sons and defendants 2 and 3 are the daughters of late Sardar Maha Singh who died on 12-5-1982. Late Sardar Maha Singh was employed in the office of the Director General of Police of the erstwhile Government of Hyderabad. He retired from service on 31-3-1947 on a pension of Rs.41-51 Paise having drawn a pay of less than Rs. 100-00 per month. During the service of late Maha Singh, he spent all his savings etc., for the marriage expenses of the first plaintiff and his first daughter. He also commuted a portion of his pension to meet the family expenses and also for the marriage of the second plaintiff. He celebrated the marriage of his first daughter in the year 1944. For the purpose of meeting marriage expenses and for other family expenses, late Maha Singh had to sell the ancestral joint family house situated at Warangal. Thus he had no assets by the end of 1954 and on account of commutation, his pension was also reduced to Rs.209-94 per month. Plaintiffs 1 and 2 joined employment in 1943 and 1945 respectively and they have been regularly contributing funds for the maintenance of the joint family till the death of their father in May, 1972. Plaintiffs 1 and 2 left the family house in 1953 and 1954 respectively for want of accommodation and to allow their parents and other members of the joint family to live comfortably. The suit house in which the family was living was originally a rented house and it belonged to the City Improvement Board and the father of the plaintiffs used to pay a monthly rent of Rs.7-20. The tenancy was in the name of late Maha Singh. Subsequently the suit house was offered to late Maha Singh on hire purchase agreement. The plaintiffs with a view to acquire the residential house for the benefit of the joint family and to keep their parents comfortable, persuaded their father to apply for purchasing the suit house in his name and got the same under hire purchase agreement in the name of their father. In

furtherance of the same the plaintiffs paid a total sum of Rs.3023-81 to the City Improvement Board which later became A.P. Housing Board, the suit house was also registered in the name of his father on 30-6-1970. The father of the plaintiffs and defendants, Sardar Mahasingh died on 12-5-1972 on account of Cerebral haemorrhage. After the death of Mahasingh, the plaintiffs have been requesting the defendants to have the suit house partitioned by metes and bounds and the defendants have been evading the same. The plaintiffs later got issued a registered notice demanding partition and the defendants having received the same gave a false reply stating that the plaintiffs did not contribute anything for the purchase of the suit house and that their father executed a registered will bequeathing the suit property in favour of the 1st defendant. The said will deed was not executed by late Mahasingh in a sound state of mind. Since the will is not proved and since the suit house is the joint family property, the plaintiffs are entitled to 2/3rd share. Hence the suit for partition.

4. The suit is resisted by the first defendant denying the plaint averments. It is the case of the first defendant that the plaintiffs got themselves separated from their father late Sardar Mahasingh as long back as in the years 1953 and 1954 respectively and that during his life time late Sardar Mahasingh purchased the suit schedule house Bearing No.133B/11-5-49 situate at New Mallepalli from A.P. Housing Board having paid all the instalments. Late Mahasingh did not take any help or contribution from the plaintiffs for the purpose of acquiring the suit schedule house. In fact, the plaintiffs were never concerned with the suit house and late Mahasingh himself was a hire purchase allottee till the last instalment was paid by him and the suit house was transferred in his name by the A.P. Housing Board. In short, Sardar Mahasingh is the absolute owner of the suit schedule house. It is contended that late Mahasingh performed the wedding of the second and third defendants, who are the sisters of the plaintiffs and the 1st defendant. It is the case of the first defendant that during his life time late Sardar Mahasingh executed a registered will dated 28-1-1972 in his own hand writing in favour of the 1st defendant with his free will and on his own volition and the said fact was informed by late Sardar Mahasingh to his son, the 1st defendant through a letter dated 8-2-1972 and later on, late Sardar Mahasingh got the holograph will registered in favour of the first defendant under which he conveyed the suit

schedule house in favour of the first defendant, in view of the registered will the first defendant became the absolute owner of the suit schedule house and therefore the suit for partition is not maintainable.

5. Defendants 2 and 3, who are the sisters of the plaintiffs and the first defendant, filed a written statement supporting the case of the first defendant. They contended that the plaintiffs never contributed anything for the purchase of the suit schedule house and that the plaintiffs got themselves separated long back during the life time of their father in the year 1954. In short, their contention is that the first defendant has become the absolute owner of the suit schedule house by virtue of the will executed by their father.

6. Based on the above pleadings, the trial Court found that though the will is a registered will, PW3 the attesting witness did not prove the execution of the will and so holding decreed the suit for partition. Hence the present appeal.

7. Sri C. Ramesh Sagar, the learned Counsel for the appellant-1st defendant assailed the judgment and decree of the trial Court on the ground that the trial Court having found that Ex.B48 will was duly executed on 10-5-1972 and registered on 11-5-1972 ought to have held that the will has been proved as contemplated under Section 63 of the Indian Succession Act and Section 68 of the Indian Evidence Act.

8. The learned Counsel for the appellant has assailed the judgment of the trial Court and contended that Ex.B48 is a holograph will and it has been registered and its execution is duly proved by examining PW3, one of the attestors, and DW3 the Sub-Registrar. It is his case that the first defendant has discharged his burden in proving that the will was executed by his father in his own hand writing and it was duly registered. He took me to the relevant portions of the evidence of PW1 and DW3 for establishing that the execution of the will was proved as contemplated under the provisions of Indian Succession Act and the Indian Evidence Act. He laid strong reliance on the evidence of DW3 who has deposed that the executant admitted before him that the document was written by him and signed by him and two identifying witnesses were also present when the execution so admitted. The learned Counsel for the appellant contended that the trial Court

having held that all the suspicious circumstances are satisfactorily dispelled and the disposition under Ex.B48 is natural, ought to have dismissed the suit upholding the validity of the will.

9. Sri Keerthi Prabhakar, the learned Counsel for respondents 1 and 2 (plaintiffs) supported the finding of the trial Court and has contended that the will is not attested as contemplated under Section 63 of the Indian Succession Act. He contended that the will was executed on a day before the registration and the attesting witnesses could not have witnessed the testator affixing his signature on the will.

10. On the basis of the above pleadings and rival contentions of the parties, it is the primary function of this Court to construe the will Ex.B48 and to ascertain the real intention of the testator and to give effect to it entirely disregarding the interested contentions of the parties. Adverting to the canons of construction of a will, the Supreme Court in *Gnambal Ammal v. Raju Ayyar*, : [1950]1SCR949 , held as follows:

'The cardinal maxim to be observed by Courts in construing a will is to endeavour to ascertain the intention of the testator. This intention has to be gathered primarily from the language of the document which is to be read as a whole without indulging in any conjecture or speculation as to what the testator would have done if he had been better informed or better advised. Thus, the intention of the testator and the effect of the dispositions contained in the will must be decided by construing the will as a whole and giving the relevant clause in the will their plain grammatical meaning considered together. In construing the language of the will, the Courts are entitled and bound to bear in mind other matters than merely the words used. They must consider the surrounding circumstances, the position of the testator, his family relationship, the probability that he would use words in a particular sense, and many other things which are often summed up in the somewhat picturesque figure. The Court is entitled to put itself into the testator's arm-chair. But all this is solely as an aid to arriving at a right construction of the will and to ascertain the meaning of the language when used by particular testator in that document. So soon as the construction is settled, the duty of the Court is to

carry out the intention as expressed and none other. The Court is in no case justified in adding to testamentary disposition. In all cases it must loyally carry out the will as properly construed, and this duty is universal, and is true alike of wills of every nationality and every religion or rank of life'.

11. In *Ram G. Pal v. Alpna Kunwar*, AIR 1922 PC 360, while dealing with the will, Lord Buckmaster held as follows:

'A will is one of the most solemn documents known to the law. By it a dead man entrusts to the living the carrying out of his wishes and as it is impossible that he can be called either to deny his signature or to explain the circumstances in which it was executed it is essential that trustworthy and effective evidence should be given to establish compliance with the necessary forms of law.'

12. Hence the document must be construed as a whole giving required importance and attention to every provisions therein. The intention of the person making the grant must be gathered from the language employed by the grantor giving plain and natural meaning to the words used in the instrument. In short, while considering the intention of the testator the Court is entitled to put itself in testator's arm-chair (vide *Narasimha Appa Rao v. Parthasarathi Appa Rao*, ILR 37 Mad. 199). In *R. Kameswara Rao v. B. Swyaprakasa Rao*, : AIR 1962 AP178 , while dealing with the proof of will, a Division Bench of this Court made the following observations:-

'The onus probandi lies in every case upon the party propounding a will and he must satisfy the conscience of the Court that the instrument so propounded is the last will of a free and capable testator. If a party writes or prepares a will under which he takes a benefit, that is a circumstance that ought generally excite the suspicion of the Court, and calls upon it to be vigilant and jealous in examining the evidence in support of the instrument in favour of which it ought not to pronounce unless the suspicion is removed and it is judicially satisfied that the paper propounded does express the true will of the deceased.'

13. Keeping in view all the aforementioned judicial pronouncements and pleadings, I will first address myself to the case of the plaintiffs. It is the case of the

plaintiffs that they contributed funds periodically for the purchase of the suit schedule house which was ultimately registered in the name of late Sardar Mahasingh as hire purchaser. It is in evidence that the A.P. Housing Board registered the suit schedule house in the name of late Sardar Maha Singh on 30th June, 1970 and that he died of cerebral haemorrhage on 12-5-1972. The plaintiffs contended that he died intestate and the will set up by the first defendant is not true and valid. According to the plaintiffs, the suit house is a joint family property and is liable to be partitioned. From the pleadings, the validity of Ex.B48 looms large and this Court has to address itself to the issue whether Ex.B48 executed by the father of plaintiffs and defendants is true and valid and is binding on the plaintiffs. For the purpose of proving Ex.B48 will the first defendant examined himself as DW2. Since he is a propounder of the will the burden is upon him to establish that Ex.B48 is the last will of late Sardar Mahasingh and it was executed in a sound state of mind. In his evidence DW1 has stated that he joined as a Head Constable in Police Department in the year 1951 and later in 1956 he joined the Central intelligence Bureau at Calcutta and by promotion as Assistant Intelligence Officer Grade II he was posted at Shillong where he worked upto 1971 and later on transferred to Bombay. He further stated that he was posted back to Hyderabad at CIB and in 1976 he was promoted as Grade I Officer and was posted at Bidar. He further stated that his mother pre-deceased his father and got marked letters written by his father. It is his case that after the death of the father, he was paying all the taxes. He placed strong reliance on Ex.B53 a letter dated 8-2-1972. In that letter he has expressed his desire to execute registered will and transfer the suit property in favour of the 1st defendant. Ex.B49 is a draft will dated 28-1-1972. The draft will Ex.B49 and registered will Ex.B48 are identical. Ex.B49 and Ex.B48 were marked to show that late Sardar Maha Singh was clear in his mind in executing the registered will and transferring the suit schedule house in favour of the first defendant. Elaborate cross-examination was conducted questioning the veracity of the registered will. The defendants also examined DW2 who is the son-in-law of late Sardar Maha Singh and wife(sic husband) of the second defendant and who worked in State Excise Department. He supported the case of the first respondent. He also spoke to the fact that his father-in-law used to express his desire to convey the suit house to the first defendant. In short, he supported the case of the

first defendant. PW3 though came as a witness of the plaintiffs, has deposed as an attester to the will. He also states that he is an identifying witness and identified the signature. According to him there were already signatures on Ex.B48 by the time he signed the document at the office of the Sub-Registrar. He also stated that the second attester is one Mr. M.K. Shareef who told him that he knows Sardar Maha Singh and requested him to sign as an attesting witness. DW3 is the Sub-Registrar who registered the will and worked as Sub-Registrar at Khairatabad during the time when the will was registered. He speaks to the effect that Ex.B48 will was registered by him and that the executant Maha Singh produced the document before him for registration. Since there were no signatures of the attesting witnesses on the document he has asked the executant to fetch two identifying witnesses. Later the executant brought two witnesses and he said that he took the signatures of the identifying witnesses on the endorsement of registration made by him. He also admits that Mahasingh and two witnesses have signed before him on the endorsement. He further states that the executant admitted before him that the document is in his own hand writing and he has signed the document. DW3 states as hereunder:-

'When the executant made this admission the two identifying witnesses were present. The executant admitted his signature on the document and the two identifying witnesses were also present when executant so admitted.'

14. From the evidence of DW3 it is obvious that the identifying witnesses have signed before the Sub-Registrar. In the cross-examination DW3 has clearly stated that the testator has presented the document before him and when he questioned the purpose of the document he has stated that he wanted the will to be registered and at that time the identifying witnesses were present. The evidence of DW3 coupled with the evidence of the attester PW3 establishes that the registered will was proved as contemplated under Section 63 of the Indian Succession Act and Section 68 of the Evidence Act. It is also relevant to mention that the 1st plaintiff examining himself as PW2 has admitted that Ex.B48 is a registered will dated 10-5-1972 which is in the hand writing of his father. He also admitted that Ex.B49 dated 28-1-1972 the unregistered will is in the hand writing of his father. Thus even the plaintiffs are not able to question the validity of the will.

Further in Ex.B59 the testator has given reasons for bequeathing the house in favour of the 1st defendant. He is critical of the attitude of the eldest son and that appears to be the reason for late Sardar Maha Singh to give the suit house exclusively to the 1st defendant.

15. The trial Court has held that Ex.B48 was executed by late Sardar Mahan Singh and that all the suspicious circumstances have been satisfactorily dispelled and that disposition under Ex.B48 is natural and is in consonance with the Sardar Maha Singh's relationship with his son but, however, held that will has not been properly attested. This finding is contrary to the overwhelming oral and documentary evidence adduced by the 1st defendant. I, therefore, hold that the holograph will Ex.B48 is true and genuine and that late Sardar Mahan Singh had executed the will in sound state of mind bequeathing the suit schedule house in favour of the 1st defendant.

16. In view of the afore-mentioned findings, the appeal CCCA No.38 of 1986 preferred by the first defendant is allowed and the suit for partition is dismissed. There will be no order as to costs. In view of the finding that Ex.B48 will is genuine and valid and conveys absolute title to the 1st defendant, CCCA No.53 of 1986 preferred by the plaintiffs stands dismissed. There will be no order as to costs.