

Krishan Kumar and ors. Vs. Daryao Singh (Deceased by Lrs) and ors.

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Court : Punjab and Haryana

Decided On : Sep-03-2004

Reported in : AIR2005P& H52; (2005)139PLR512

Judge : Viney Mittal, J.

Acts : [Succession Act, 1925](#) - Sections 63

Appeal No. : Second Appeal No. 731 of 1981

Appellant : Krishan Kumar and ors.

Respondent : Daryao Singh (Deceased by Lrs) and ors.

Advocate for Def. : Heman Aggarwal, Adv.

Advocate for Pet/Ap. : M.L. Sarin, Sr. Counsel and; Alka Sarin, Adv.

Disposition : Appeal dismissed

Judgement :

Viney Mittal, J.

1. The plaintiff have approached this Court through the present regular second appeal. They have challenged the judgment and decree dated January 31, 1981 passed by the learned Additional District Judge, Rohtak whereby the appeal filed by the defendants was allowed and after setting aside the judgment and decree of

the learned trial Court the suit filed by the plaintiffs was dismissed.

2. The plaintiffs filed a suit for declaration to the effect that they are owners in possession of the land in dispute and also sought permanent injunction for restraining the defendants from interfering into the possession of the plaintiffs. Alternatively, a decree for possession of the land in question was sought.

3. The plaintiffs claimed that the land in dispute was originally owned by Bujjan. He gifted the property to Prabhu who was daughter's son of Nand Ram, real brother of Bujjan. Prabhu died on April 11, 1976. He died issueless and without any wife. The plaintiffs claimed that they are collaterals of Bujjan and on the death of Prabhu, the land in dispute which had been gifted originally by Bujjan, had reverted back to Bujjan. On that basis, they claim that they were entitled to succeed to the aforesaid land left behind by Prabhu. The plaintiffs also claimed that the parties were governed by customary law in the matters of alienation and succession. Since the defendants were setting up a registered Will dated October 14, 1966 executed by Prabhu in their favour, therefore, the plaintiffs claimed that the aforesaid Will was a forged and fictitious document and was never executed by Prabhu and in any case Prabhu had no right to execute any Will qua the ancestral property. On that basis, the plaintiffs claimed that the said Will was not binding upon their rights in any manner. Accordingly, the plaintiffs filed a suit for seeking declaration and other reliefs, as noticed above.

4. The suit was contested by the defendants. They claimed that the property in question was self-acquired property of Bujjan and subsequently of Prabhu who had absolute powers to alienate the same in any manner. The defendants also claimed that the parties were governed by Hindu Law. The defendants relied upon the registered Will dated October 14, 1966 which Prabhu had executed voluntarily and with his free disposing mind. The defendants further claimed that the aforesaid Will had been executed by Prabhu, since the defendants were rendering him service and Prabhu was living with them. The defendants further claimed that on the basis of the aforesaid Will, they had become the absolute owners of the suit land.

5. The learned trial Court, on the basis of evidence available on the record, found that the property in question was not ancestral in the hands of Bujjan or Prabhu. It was also held that the land was self-acquired property of Bujjan and he had unrestricted powers to deal with the same. It was further held that although the plaintiffs were collaterals of Bujjan but the land at any stage did not revert back from Prabhu to Bujjan. Although, the learned trial Court further held that the Will Ex. D1 was duly proved to have been executed by Prabhu in favour of the defendants but it was held that the aforesaid Will was surrounded by suspicious circumstances. On the basis of the aforesaid findings, the Will Ex. D1 relied upon by the defendants was rejected and consequently the suit filed by the plaintiffs was decreed.

6. The defendants took up the matter in appeal. The learned first appellate Court reappraised the entire evidence and also reexamined the entire controversy. On the basis of the aforesaid reconsideration of the entire matter, the learned first appellate Court came to the conclusion that the Will Ex. D1 was proved to have been duly executed by Prabhu in favour of the defendants and there were no suspicious circumstances in execution of the aforesaid Will. Accordingly, it was held that the Will in question operated for the benefit of the defendants. Accordingly, after reversing the finding on the question of due execution of the Will recorded by the learned trial Court, the learned trial appellate Court, accepted the appeal filed by the defendants. Consequently, the suit filed by the plaintiffs was dismissed.

7. The plaintiffs have now felt dissatisfied and have approached this Court through the present Regular Second Appeal.

8. I have heard Shri M. L. Sarin, the learned senior counsel appearing for the appellants and Shri Heman Aggarwal, the learned counsel appearing for the respondents and with their assistance have also gone through the record of the case.

9. Shri M. L. Sarin, the learned senior counsel appearing for the appellants has canvassed that the following substantial questions of law arise in the present appeal:

(a) Whether the lower Appellate Court made an error in law in not considering the suspicious circumstances surrounding the Will which remained un-dispelled ?

(b) Whether affixation of a thumb impression by an obviously disabled (blind and hard of hearing) and illiterate testator would amount to the valid execution of a Will ?

(c) Whether the beneficiaries having played a prominent part in the execution of the Will, the said circumstance itself was not sufficient to reject the Will being surrounded by suspicious circumstances ?

10. Shri M. L. Sarin, the learned senior counsel for the appellants has argued that the Will Ex. D1 alleged to have been executed by Prabhu was surrounded by suspicious circumstances and, as such, the learned first appellate Court had committed an error of law in holding that the aforesaid Will was shown to be duly executed by Prabhu. The learned senior counsel has elaborated that the due execution of the aforesaid Will was not proved, inasmuch as, the executant Prabhu was admittedly a blind person who was also hard of hearing. Besides being hard of hearing, he was also illiterate. On that basis, the learned senior counsel has maintained that the due execution of the Will itself was a matter of contest. It has, further been argued by Shri Sarin that the beneficiaries of the Will i.e. the defendants are strangers and, as such, there was no occasion for Prabhu to have executed any Will in their favour thereby disinheriting his natural heirs i.e. the plaintiffs who are collaterals of Bujjan. It is also pointed out that there was no evidence led by the defendants that they were actually serving Prabhu, since according to the learned senior counsel Prabhu had died in the village Chaupal, Another circumstance, which according to the learned senior counsel, is a suspicious circumstance is that Prabhu was under the influence of the defendants who had not only influenced him to execute the Will but had also actively participated in the aforesaid execution of the Will. On that basis, it has been argued that active participation of a beneficiary in execution of a Will, has been consistently held to be; a suspicious circumstance. It has further been argued that the findings recorded by the learned first appellate Court were judicially perverse and were liable to be set aside.

11. on the other hand,' Shri Heman Aggarwal,' 'the learned Counsel for the respondents has argued that the Will Ex. D1 was duly proved to have been executed by Prabhu, and the aforesaid Will was,a registered Will- It has: also been, argued ;by the learned counsel that the aforesaid registered Will Ex. D1 had been;executed by Prabhu on october 14; 1966 and admittedly Prabhu ; handled, had April,11 1976. and Since the aforesaid Will had not been revoked by. Prabhu for a long period of 10 years- when he had remained alive, therefore this, fact along, dispelled all the suspicions, if any, in the due execution of the aforesaid Will by Prabhu. It has further been contended by the learned counsel for the respondents that Prabhu was an old man who was being looked after by the defendants and was living with them. Since the defendants were rendering him service, therefore, Prabhu, had executed the Will Ex. D1 in their favour bequeathing his property in their favour. The learned counsel has also refuted that any undue influence was exerted by the defen-, dants upon Prabhu for execution of the Will, nor had the defendants taken any active part . in the execution of the said Will.

12. I have given my 'anxious thought to the rival contentions raised by the learned counsel for the parties.

13. In my considered opinion, there is no merit in the present appeal. The Will in question cannot be held to be surrounded by any suspicious circumstances, as has also been found by the learned first appellate Court.

14. It is well settled that a Will has to be proved like any other document and the test to be applied being the usual test of the satisfaction of the prudent mind in such matters as in the case of proof of other documents, so in the case of proof of Wills, one cannot insist on proof with mathematical certainty. Reference in this regard be made to AIR 1959 SC 443 (H. Venkatachala Iyengar v. B. N. Thimmajamma).

15. As far as the execution of the Will Ex. D1 is concerned, even the learned trial Court had recorded a finding of fact that it had been proved beyond all reasonable doubts that Prabhu had executed a Will in favour of the defendants. The aforesaid finding of fact was affirmed by the learned first appellate Court as well.

16. In view of the aforesaid finding, the execution of the Will Ex. DI by Prabhu in favour of the defendants is not a matter of dispute any further. Thus, the only question which remains to be examined is as to whether the Will Ex. DI was surrounded by any suspicious circumstances. The Will Ex. DI was executed by Prabhu and registered on October 14, 1966. Prabhu had died on April 11, 1976. During the aforesaid period of about 10 years, Prabhu had chosen not to revoke the aforesaid Will. This fact itself would go a very long way to dispel any doubt with regard to the due execution of the Will, as has been held by the Apex Court in *Satya Pal Gopal Das v. Smt. Panchubala Dasi*, AIR 1985 SC 500 and *Kartar Kaur v. Bhagwan Kaur*, 1993(1) Pun LR 99.

17. Although the plaintiffs have asserted that the defendants being strangers to the family of Prabhu were not related to him in any manner but the evidence on record clearly shows that Prabhu was being looked after by the defendants and was being served by them. Prabhu was issueless and without a wife. Once the defendants were rendering him service, then it was only natural for Prabhu to have bequeathed his property in favour of the defendants. No evidence has been led by the plaintiffs at all to prove that it were the plaintiffs who were serving Prabhu in any manner or that he was living with them.

18. Although an argument has been raised by the plaintiffs that Prabhu was under the undue influence of the defendants, who had also participated in execution of the Will, but nothing has been brought on the record by the plaintiffs to show as to how and in what manner Prabhu was under any undue influence of the defendants. The mere fact that defendant Jagdish had admitted in his statement that he had also accompanied Prabhu when he went to execute the Will would not lead to any inference that Jagdish had also actively participated in execution of the Will. Prabhu was an old man who was also blind and hard of hearing. He needed somebody to accompany him when he wanted to execute the Will. In these circumstances, if defendant Jagdish had accompanied him for the execution of the aforesaid Will, that fact itself cannot be used against the defendants to conclude that there was any active participation of the defendants in execution of the Will. Similarly, it cannot be held that merely because Prabhu was blind or hard of hearing, that his mental faculties were also affected in any manner. DW-3 Bhim

Sain; Deed Writer, had scribed the Will Ex.-DL The said witness has categorically stated; that the Will in question was written by him on the asking of Prabhu who had thumb marked it after the contents thereof were read to him. A similar statement has been made by DW-2 Sultan Singh who is one of: the attesting witnesses of the said Will. Nothing meaningful has come on record in the cross-examination of the aforesaid witnesses to show that Prabhu was in any manner influenced by the defendants or that he did not understand the factum of execution of the Will. Merely because Prabhu was dis-' abled in hearing and vision, would not lead to any inference that his mental faculties were also affected in any manner.

19. In view of the aforesaid discussion, I am satisfied that the defendants have been able to prove the due execution of the Will Ex. DI executed by Prabhu in their favour and have also been able to dispel all the suspicions suggested by the plaintiffs in the execution of the aforesaid Will.

20. Accordingly, I find that the substantial questions suggested by the appellants, having arisen in the present regular second appeal, have necessarily to be answered against the appellants.

21. No other point has been urged.

22. In view of the aforesaid discussion, I find that there is no merit in the present appeal and as such the same is accordingly dismissed. There shall be no order as to costs.