

S. Amarjit Singh Vs. State and ors.

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SooperKanoon Citation : sooperkanoon.com/695627

Court : Delhi

Decided On : May-28-1998

Reported in : AIR1999Delhi33

Judge : Usha Mehra, J.

Appeal No. : F.A.O. 275 of 1983

Appellant : S. Amarjit Singh

Respondent : State and ors.

Advocate for Def. : Mr. A. Mariaputham and ; Ms. Aruna Mathur, Advs.

Advocate for Pet/Ap. : Mrs. Amrit Oberoi, Adv

Judgement :

Usha Mehra, J.

1. The question that arises for consideration is; whether the evidence led by the propounder of the Will was such as to satisfy the conscious of the Court that the will was validly executed and that the same was genuine.

2. In order to answer these question we may have a glance to the relevant facts. Late Shri. Chhattar Singh, father of the propounder and the objector owned a house bearing No. 25/34-35, West Patel Nagar, Delhi. Late Chhattar Singh

executed a Will and got it registered with the Sub-Registrar on 5th April, 1978. By the said Will late Chhattar Singh bequeathed his property in favor of his eldest son namely Mohinder Singh to the exclusion of his other legal heirs, namely, daughter Tripat Kaur and son Amarjit Singh. In the Will the Testator stated that this house was his self acquired property and being the owner he could bequeath it. He bequeathed the house in favor of his eldest son because that son contributed towards the costs of instalments and improvement of the house. Moreover, that son Mohinder Singh had been kind and sincere to him. The Will was drafted by one Mr. Balraj Kishan Advocate (PW-3). He also attested the Will. Second attesting witness (PW-2) was also a lawyer. Attesting witnesses accompanied the testator before the Sub-Registrar and were present at the time of registration of the Will on 5th April, 1978. After the death of Chhattar Singh, Mohinder Singh filed the petition under Section 276 of the Indian Succession Act, 1925 for obtaining probate. Notices were issued to the legal heirs of Chhattar Singh i.e. his daughter Tripat Kaur and son Amarjit Singh. Citation also appeared in the English daily 'Statesman'. Tripat Kaur filed reply stating therein that she had no objection to the grant of probate pursuant to the said Will. She admitted the execution of the Will by her father late Chhattar Singh in favor of her eldest brother. Amarjit Singh, the appellant herein, however, contested the Will, inter alia, on the grounds that it was a fabricated document beside being unnatural for the deceased to disinherit his other legal heirs with whom he had cordial relations. The deceased could not have excluded from inheritances his divorcee daughter Tripat Kaur who was living with him and dependent upon him. Moreover, the execution of the Will was shrouded with suspicious circumstances. The Will was in English whereas deceased hardly knew English. Testator was in bad state of health in April, 1978. The testator could not have made this Will of his free volition. It was nothing but a fabricated document. These assertions were refuted by the propounder by leading oral and documentary evidence. After considering the oral and documentary evidence by the parties the Probate Court vide the impugned order rejected the objections of Shri. Amarjit Singh and granted the probate in favor of Mohinder Singh. It is against the grant of probate that Shri Amarjit Singh felt aggrieved.

3. At the outset it must be said that if an objector raises plea of suspicious circumstances then to dispel these suspicious circumstances surrounding the

making of the Will, the party who set up the Will has to offer a cogent and convincing Explanation. It must also be understood that mere registration of the Will by itself is not sufficient to conclude that the Will is genuine. This may be one of the strong factors in favor to conclude the Will to be genuine. The deprivation of natural heirs by itself is also not in all cases a suspicious circumstance. Similarly, non-identification of the testator before the Sub-Registrar would not create a suspicious circumstance in every case particularly when a wrong person had not been identified as testator. Keeping these factors into consideration, we have to see whether the Will in question was validly executed. The Apex Court in the case of *Smt. Sushma Devi Vs . Pandir Krishna Kumar Missir & Ors. : AIR 1971 SC2236* observed that the Judges cannot impose their own standards on behalf of those who executed the Will. The suspicious circumstances pointed out by the objector have to be distinguished by the must be remembered that the probate Court is only concerned with the question whether the document put forward is the last Will and testament of the deceased and was duly executed and attested in accordance with law. That at the time of execution the testator had sound disposing mind. Supreme Court in *Joyce Primrose Prestor (Mrs.) (NEE NAS) Vs . Vera Marie Vas (Ms.) and Ors. reported in : (1996)9SCC324* held that genuineness of the Will is a question of fact depending upon appreciation of evidence. therefore, due weight should be given to the Probate Court's findings. Similarly Privy Council in the case of *Sunanda Arunachellam Chetty v. S.R.M. Ramaswami Chetty* reported in 1916 Vol. 35 page 1, observed that once the man's mind is free and clear and capable of disposing of his property then the way in which it is to be disposed rests with him. It is not for any Court to try and discover whether a Will could not have been made more consonant either with reason or with justice. In *Smt. Jaswant Kaur Vs . Smt. Amrit Kaur and Ors. case reported in : [1977]1SCR925* the Supreme Court after analysing a long line of decisions having bearing on the nature and standard of evidence required to prove a Will laid down guidelines which were reiterated by this Court in the case of *Rajindernath Sharma and Ors. Vs . Rani Chander Kanta & Ors. : AIR1982 Delhi584* and can be summarised thus:-

'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 take 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 take 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 but it will not by itself be sufficient to dispel all suspicions without submitting the evidence of the Registrar to be 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 its execution and signed it in token thereof, the registration will dispel the doubts as to the genuineness of the Will.'

4. It is in this backdrop we have to see the case of the propounder and the objector. The main thrust of Mrs. Amrit Obroi's contentions are that the Probate Court ignored the suspicious circumstances namely (1) Names of all legal heirs had not been mentioned in the Will. (2) House was not the self acquired property of the testator. (3) Deceased wanted to sell this house to the propounder that is why sought permission from L & D.O. and other authorities. (4) The testator had without any reason deprived inheritance to his divorcee daughter Tripat Kaur who had been living with him and was dependent on him. Moreover, Tripat Kaur was not examined. (5) Disposing of property by way of Will is very unnatural. (6) Propounder Mohinder Singh took active part and was involved in the preparation of the Will. (7) The attesting witnesses were not known to the testator. They failed to identify the testator nor could prove that the Will was validly executed and finally (8) The Sub Registrar before registering the Will had not read over the contents of

the Will. Hence the registration of the Will was perfunctory. According to Mrs. Oberoi in view of the these suspicious circumstances pointed out by the appellant the probate petition ought to have been dismissed.

5. Let's take the last ground urged by Mrs. Oberoi first and find out whether registration of the Will in question was perfunctory. Shri Balraj Kishan, Advocate, drafted the Will. He was one of the attesting witnesses. Appearing as PW-3 he testified that he read over the contents of the Will to the testator in the presence of the Sub Registrar and thereafter registration took place. He, however, accepted that Sub Registrar did not read the contents of the Will to the testator. Relying on this part of PW-3's statement Mrs. Oberoi urged that testator could not have known the contents of the Will. Reading and explaining the contents of the document by the Sub Registrar and acknowledging the correctness of the same by the testator before the Sub Registrar was precondition. It is only after the testator acknowledged the correctness that the Sub Registrar gives endorsement of the same on the Will. But in this case neither testator knew about the contents of the Will nor Sub Registrar made any endorsement. This according to Mrs. Oberoi makes the registration a perfunctory one. Law casts a duty on the Sub Registrar to explain the contents of the Will to the testator before registering the same. The endorsement of the same by the Sub Registrar would prove that the Will was understood by the testator as explained. The Sub Registrar explains the contents of the document in order to satisfy that a genuine document was being registered. It is requirement of law as laid down by the Supreme Court in the case of *Poornima Devi Vs . Kumar Khagendra* : [1962]3SCR195 . The Apex Court observed that :-

'If the evidence to the registration on close examination shows that it was done in an perfunctory manner, that the officer registering the Will did not read 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 seeking the testator reading the will) that the testator knew that it was will the execution of which he was admitting, the fact that the will was registered would not be of much value. It is not unknown that the registration may take place without the executant really knowing what he was registering. therefore, the mere fact of registration may not by itself be enough to dispel all suspicions that may attach to the execution and

the attestation of the Will.' (The underlining is mine)

6. Similarly, in the case of Rabindra Nath Mukherjee and Anr. Vs . Pan-CHANAN Banerjee (dead) by LRs. reported in : AIR 1995 SC1684 , the Apex Court attached importance to the certificate of the Sub Registrar given on the Will in order to conclude that the Will was read over and explained to the executor who on doing so admitted the contents. Relying on these observations of the Apex Court Mrs. Oberoi contended that the Will in question having not been explained and read over to the testator by the Sub Registrar nor certificate attached, the Will in question cannot be called genuine nor registration would add any authenticity to such a Will. There cannot be any quarrel with the legal submissions made by Mrs. Oberoi. But what we have to see in the facts of this case whether testator knew about the contents of the Will or was he made aware of the same by any other way than being read over by the Sub Registrar? Was the Sub Registrar satisfied that testator knew about the contents of the Will and acknowledged its correctness. It is not in every case Sub Registrar should satisfy himself by reading the contents of the Will as held in Poornima Devi's case. Testator could himself have read the contents of the document or it could be read over in the presence of the Sub Registrar by any other person accompanying him before the Sub-Registrar. It is in fact the satisfaction of the Sub-Registrar before registering the Will which is a very relevant factor. That satisfaction in the present case the SubRegistrar drew when the Will was read over to the testator in his presence by one of the attesting witnesses i.e. PW-3. Perusal of the original Will Ex. P-5 shows that there is an endorsement made on the back of the Will by stamping by the Sub-Registrar indicating that the document was explained to the executor. The stamp endorsement though dim but by straining the eyes one can read it, therefore, for convenience that portion of endorsement on Ex. P-5 has been marked as 'X'. The fact that Will was explained to the testator has been proved from the un rebutted testimony of PW-3. We cannot read the evidence of attesting witnesses in piecemeal. It has to be read as a whole and not out of context. When PW-3 said Sub-Registrar did not read over the Will to the testator but at the same time stated in no uncertain words that he himself read over the contents of the Will to late Chhattar Singh i.e. the testator in the presence of the Sub-Registrar. PW-3 was not questioned on this aspect of his statement, nor even a suggestion was put

that Chhattar Singh was not aware of the contents of the Will or that PW-3 never read the contents of the Will in the presence of Sub Registrar or testator was not aware of the contents of the Will. Supreme Court in Poornima Devi's case (Supra) has opined that admission of the execution of the Will by the testator can be drawn by the Sub-Registrar by some other way also. In the present case Sub-Registrar satisfied himself of the valid execution of the Will by Shri Chhattar Singh and his acknowledging the current ness of the same because the Will has read over to the testator by the scribe of the Will who happened to be one of the attesting witnesses. In such an eventuality it cannot be said that registration of the Will was perfunctory or that the Sub-Registrar did not satisfy himself that the testator was aware of the contents of the Will. Secondly, the intention of the testator to bequeath his property in favor of the propounder can also be gathered from the surrounding circumstances, namely execution of Agreement to Sell executed by the testator in 1963 in favor of this propounder his eldest son. Testator, Chhattar Singh also filed two application, one to the Land and Development Officer and the other to the competent authority which are Ex.P.-2 and P-3 vide these applications he sought permission of the authority to sell his property to his eldest son, the propounder herein. Reply received from the authority was exhibited as P-4. Coupled with these documents we have affidavit of the testator Ex. P-6. Execution of these documents were not denied by the objector. Perusal of these documents reveal the intention of the testator. He wanted this property to vest with his eldest son. When he failed for some reasons to transfer it in his life time he executed this Will. Moreover testator was not an illiterate person. DW-1 a relation of the parties testified that the testator had studied up to metriculation. Being a metriculate of those days it cannot be said that testator could not have understood the contents of the Will. Testator was 65 years in 1978 when he died. metriculate of those days could not be called illiterate. thereforee, it is difficult to agree with the contention of Mrs. Oberoi that the testator was not aware of the contents of the Will or that the testator was not made aware of the contents of the Will in the presence of the Sub-Registrar or that the Sub-Registrar did not satisfy himself before registration of the Will. For the above reasons and in view of the facts which have come on record it cannot be said that registration of the Will was perfunctory. Once the contents of the Will were explained and understood by the testator through the

attesting witness in the presence of the Sub-Registrar, the Probate Court was right in drawing the presumption that the Sub-Registrar registered the Will after satisfying himself that the testator acknowledged the correctness of the contents of the Will. In view of the uncontroverted statement of PW-3 it stood proved that the testator was well aware of the contents of the Will. He acknowledged the correctness of the same. Since contents were explained to the testator, therefore, the satisfaction of the Sub-Registrar was rightly presumed by the trial court.

7. To ascertain whether the will was actually executed by Shri. Chattar Singh, we have the testimony of two attesting witnesses both of whom happened to be lawyers. Mr. Balraj Kishan (PW-3) one of the attesting witnesses testified that he was known to the testator from before. Being a lawyer of the testator he was on visiting terms. PW-2 Har Prakash identified the testator before the Sub-Registrar. Beside the testimony of attesting witness we have the testimony of propounder, objector and that of Mr. Mehtab Singh (DW-1 relation of the testator) and of the Clerk of the office of Sub-Registrar. The attesting witnesses in no uncertain words testified that the testator was in sound disposing mind. Testator had executed the Will not under any undue influence. Even the witness examined by the objector Shri Mehtab Singh (DW-1) admitted that the testator was in good state of health till April, 1978. The fact that the testator was in sound disposing mind has not been denied nor even challenged by the objector at any stage. So much so the finding rendered by the Probate Court on this aspect have not been assailed before this Court. Having held that the testator was in sound disposing state of mind and was not under the influence of any person at the time of execution of the Will, it clearly follows that the Will was validly made and was made by the testator of his free volition. The execution of the Will having been admitted, coupled with the fact that the testator was in sound disposing mind and Will was attested by two attesting witnesses, hence the registration of the Will added authenticity and genuineness to the Will. The factors narrated above dispel the alleged suspicious circumstance about the genuineness of the Will as tried to set up by the appellant. Having held that Will was made by the testator of his own volition, the objection of Mrs. Amrit Oberoi that the propounder took active part in the preparation of the Will find no substance. This ground was never taken before the Trial Court nor in appeal. Rather in the appeal and in particular para 9(b) of the grounds of appeal the

appellant admitted by pleading that the propounder Mahinder Singh was not aware of the execution or the existence of the Will. This admission on the part of the appellant negates the objection now raised by Mrs. Oberoi that the propounder Mahinder Singh took active part in the execution of the Will. Reliance by Mrs. Oberoi on the decision of this Court in the case of Dinesh Kumar Vs . Khazan Singh & Ors., : AIR1988 Delhi273 is, therefore, distinguishable on the facts of this case. In the case of Dinesh Kumar (supra) the propounder husband of the testatrix took active part the execution of the Will. But that is not the case in hand. The mere fact that testator wanted to dispose of his property in favor of the propounder earlier also cannot be a ground to conclude that the Will was fabricated or not genuine. Rather the execution of those documents executed earlier in 1963 support the case of the propounder that his father genuinely wanted to give his property to him. Since the testator could not give it to the propounder during his life time hence he bequeathed it. This circumstance, to my mind, goes in favor of the propounder rather than casting any suspicion.

8. Contention of Mrs. Oberoi that exclusion of other legal heirs creates a suspicion. According to her Tripat Kaur daughter of the deceased was a divorcee and dependent on her father. Depriving her from inheritance was a very unnatural act. Similarly, the other son who was living with his father throughout and had cordial relations could not have been deprived of inheritance unless the propounder played some part in depriving them of their inheritance. Moreover, the propounder never spent any money nor lived with the testator. PW-3 was known to the propounder and at the behest of propounder this Will was executed. Moreover, the propounder not only got the Will executed in his favor but also ensured that if he fails to get the property on the basis of the Will he would fall upon the Agreement to sell, General Power of Attorney and the affidavit which he got the testator to sign in his favour. These circumstances raise suspicion about the genuineness of the Will. Moreover, no reason has been assigned as to why the testator disinherited other legal heirs. The Will was not made out of love and affection. By virtue of this Will the propounder got the testator to dispose of his property in his favor which he otherwise could not get despite agreement to sell. Mrs. Oberoi further contended the testimony of PW-3 must be unreliable. He was the man of the propounder. The testator never filed any case nor any case was pending against him, therefore,

there was no question of Mr. Balraj Kishan (PW-3) knowing him. PW-3 was in fact property dealer. These arguments of the appellant are not supportable from the facts available on record. Merely because the propounder was not staying with the testator is no ground to doubt the genuineness of the Will nor the execution of other documents create any suspicion as already pointed out above. Disinheritance of other legal heirs by itself is also no ground to doubt the genuineness of the Will nor this fact itself can create suspicion. Moreover, non-mentioning of the names of other legal heirs in the Will cannot be a reason to doubt the validity of the Will. Supreme Court in the case of Rabindra Nath Mukerjee (supra) observed that the object of making a Will is to exclude persons who would otherwise be inheriting the property in normal course of succession. therefore, exclusion of any legal heir by itself cannot be regarded as a suspicious circumstance. Law is well settled that if the execution of the Will is proved, its contents with the manner in which the property is disposed cannot be considered by the Court and probate of the Will cannot be refused on the ground that property would have been disposed of in a better manner or that reasons for excluding other natural heirs are not satisfactorily explained. For arriving at this conclusion support can be had from the following decisions Suna Ana Arun-achellam Chetty (supra), Jatinder Nath Ray Choudhry Vs . Raj Laxmi Debi : AIR1933 Cal449 ; Shyam Sunder Debanshi v. Kamal Kumar Dassi AIR 1933 Calc 770, Naresh Charan Das Gupta v. Paresh Charan Das Gupta 1955 SCR 1041; H. Venkatachala Iyengar v. B.H. Thimmajamma, 1959 Supp. 1 SCR 426.

9. The fact that Tripat Kaur was not examined before the probate court by no means effected the conclusion arrived at by the Probate Court. In fact Tripat Kaur filed a separate written statement accepting and acknowledging the validity and correctness of the Will. She also admitted the execution of the Will by her late father. She categorically stated that she was not disputing the Will nor wanted to object the same. In view of this admission there was no necessity for the opounder to examine her. If the appellant had any doubt about the correctness of the Will he could have examined Tripat Kaur as his own witness but this he never did. Thus by non-production of Tripat Kaur the case of the propounder did not get affected in any manner.

10. I am in agreement with the contention of Mr. Mariaputham that suspicious circumstance ought to have been pleaded and urged. Those cannot be pleaded or urged for the first time before the appellate court specially when foundation of such a suspicious circumstance was not laid before the Probate Court nor pleaded otherwise. Supreme Court in the case of P.K. Gopalan Nambiar Vs . Balakrishnan Nambiar reported in : [1995]2SCR585 observed that any suspicious circumstance sought to be urged by the objector should be pleaded and proved. Without such pleading and proof it cannot be taken into consideration. Similar view was expressed by the Apex Court in the case of Trojan & Co. Ltd. v. Nagappa Chettair reported in 1993 SCR 789, as well as in the case of Srivenkataramana Devaru Vs . State of Mysore reported in : [1958]1SCR895 where the Apex Court laid down the law as such:

'The object of requiring a party to putt forward his pleas in the pleadings is to enable the opposite party to controvert them and to adduce evidence in support of his case. And it would be neither legal nor just to refer to evidence adduced with reference to a matter which was actually in issue and on the basis of that evidence, to come to a finding on a matter which was not in issue, and decide the rights of the parties on the basis of that finding. We have accordingly declined to entertain this contention.'

11. In this view of the matter, this Court is not inclined to entertain such of the suspicious circumstance which were neither pleaded nor proved before the Probate Court. One of such circumstance urged for the first time is that the propounder took active part in preparation of the Will. This fact was neither pleaded nor proved nor urged before the Probate Court. It is for the first time that Mrs. Amrit Oberoi set up oral plea while arguing the case. As already pointed out above, the grounds of appeal negate this assertion of the appellant. In para 19(b) this appellant specifically averred that the propounder was not aware of the execution of the Will. Similarly, the argument that the property in question was a joint family property had not been proved before the Probate Court. This plea was raised halfheartedly in the written statement but never argued nor proved before the Probate Court. This plea in fact has been given up before this Court. It does not find mention in the grounds of appeal. Rather objector's witness M.M. Bhutani

(DW-2) testified that the property in question belonged to deceased Chhattar Singh. Even the objector appearing as DW-3 in any way admitted that the house belonged to his father. This can be inferred when he stated that he and his sister were residing with his father and that he had not seen PW-3 in that house of his father. This is an admission on the part of the objector that the house in question belonged to his father.

12. Hence there was no question of Probate Court giving any decision on the point now tried to be urged before this Court. A perusal of the grounds of appeal also show that the appellant was not aggrieved by the non-decision on this point by the Probate Court. Appellant knew he had taken a vague plea in the written statement and, therefore, did not press the same. On the contrary in ground No. 12 of this appeal, the appellant has accepted that the property in question belonged to his father. He nowhere claimed in the grounds of appeal that the property in question was a joint family property. In the absence of having proved this fact before the Probate Court, the appellant cannot be allowed to urged for the first time this ground in appeal. Moreover, title being otherwise beyond the purview of Probate Court as held by the Supreme Court in the case of *Mrs. Hem Mohini Judah v. Mrs. C.S. Bose & Ors.* (1962) Suppl. 3 SCC 294. Same view was taken by Patna and Nagpur High Courts in the cases of *Bihari Lal Manton v. Ganga Dai* AIR 1917 Pat 209 and Nagpur High Court in the case of *Abdul Rashid v. Dr. Syed & Anr.* AIR 1938 N 173.

13. For the reasons stated above, I find no merit in the appeal nor any ground to interfere with the reasoning given by the Probate Court. Dismissed.