

Sumitra Devi Kochhar and ors. Vs. State

Sumitra Devi Kochhar and ors. Vs. State

SooperKanoon Citation : sooperkanoon.com/698195

Court : Delhi

Decided On : Feb-02-1999

Reported in : 1999IAD(Delhi)833; AIR1999Delhi226; 78(1999)DLT26; 1999(49)DRJ318

Judge : M.S.A. Siddiqui, J.

Acts : [Indian Succession Act, 1925](#) - Sections 63 and 276; [Evidence Act, 1872](#) - Sections 63

Appeal No. : Probate No.37/87

Appellant : Sumitra Devi Kochhar and ors.

Respondent : State

Advocate for Def. : Mr. P.R. Chopra, Adv.

Advocate for Pet/Ap. : Mr. K. Sawhney, Adv

Judgement :

ORDER

M.S.A. Siddiqui, J.

1. The petitioners, claiming to be the executors of the Will dated 1851986 alleged to have been executed by the testator Sardari Lal Kochhar, have filed the present

petition under Section 276 of the Indian Succession Act (for short the Act) for the probate.

2. Petitioner No.1 is the widow and the petitioner Nos. 2 to 5 are sons of the testator. Respondents No.2 and 3 are daughters of the testator. On 18/5/1986, the testator executed a Will bequeathing the whole of his property movable and immovable to the petitioners. The testator died on 6/8/1986 and the probate petition was moved by the petitioners on 3/7/1987.

3. Respondent No.3 has denied the petitioners' case in toto. Respondent No.2 has resisted the probate petition contending that the Will dated 18/5/1986 is a forged document.

4. On these pleadings, following issues were framed and my findings are recorded against them for the reasons given hereunder:

1. Whether the Will in question has been duly executed?

2. Relief.

Issue No.1:

5. At the outset, I must make it clear that the respondent No.2 simply pleaded that the Will in question is a forged document and the defense of the respondent No.3 is a bare denial of the averments made in the probate petition. None of the respondents has pleaded specific facts or circumstances, which could throw a cloud of suspicion with regard to the valid execution of the Will. However, it has been laid down by the Supreme Court in *Jaswant Kaur Vs . Amrit Kaur and others* : [1977]1SCR925 that the burden to prove the genuineness of the Will is heavily cast on the propounder of the Will and he must satisfy the conscience of the Court that there is no unconscience ability about his acts or the circumstances in which the Will was executed. In *R. Venkatachala Iyengar v. B.N. Thimmajamma and others* (1959) Supp. 1 S.C.R 426, the Supreme Court has laid down the following propositions bearing on the nature and standard of evidence required to prove a Will

1. Stated generally, a will has to be proved like any other document, 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.

2. Since Section 63 of the Succession Act requires a will to be attested, it cannot be used as evidence until, as required by Section 63 of the Evidence Act, one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive and subject to the process of the court and capable of giving evidence.

3. Unlike other documents, the will speaks from the death of the testator and therefore the maker of the will is never available for deposing as to the circumstances in which the will came to be executed. This aspect introduces an element of solemnity in the decision of the question whether the document propounded is proved to be the last will and testament of the testator. Normally, the onus which lies on the propounder can be taken to be discharged on proof of the essential facts which go into the making of the will.

4. Cases in which the execution of the will is surrounded by suspicious circumstances stand on a different footing. A shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the will under which he receives a substantial benefit and such other circumstances raise suspicion about the execution of the will. That suspicion cannot be removed by the mere assertion of the propounder that the will bears the signature of the testator or that the testator was in a sound and disposing state of mind and memory at that time when the will was made, or that those like the wife and children of the testator who would normally receive their due share in his estate were disinherited because the testator might have had his own reasons for excluding them. The presence of suspicious circumstances makes the initial onus heavier and therefore, in cases where the circumstances attendant upon the execution of the will excite the suspicion of the court, the propounder must remove all legitimate suspicions before the document can be accepted as the last will of the testator.

5. It is in connection with wills, the execution of which is surrounded by suspicious circumstance that the test of satisfaction of the judicial conscience has been evolved. That test emphasise that in determining the question as to whether an instrument produced before the court is the last will of the testator, the court is called upon to decide a solemn question and by reason of suspicious circumstances the court has to be satisfied fully that the will has been validly executed by the testator.

6. If a caveator alleges fraud, undue influence, coercion etc. in regard to the execution of the will, such pleas have to be proved by him, but even in the absence of such pleas, the very circum stances surrounding the execution of the will may raise a doubt as to whether the testator was acting of his own free will. And then it is a part of the initial onus of the propounder to remove all reasonable doubts in the matter.

6. Bearing in mind the aforesaid principles, I shall proceed to consider the evidence adduced by the parties. Petitioners have examined three witnesses, namely, R.K. Samriya (PW1), A.L. Khurana (PW2) and Virender Kumar Kochar (PW3) to prove valid execution of the Will (Ex. PW 1/1). R.K. Samriya (PW1) and A.L. Khurana (PW2) are the attesting witnesses of the said Will. Both the witnesses have unequivocally stated in their statements that on 1851986, the testator late Sardari Lal Kochhar had executed the Will (Ex.PW1/1) in their presence and at that time the testator was in sound disposition of mind. Even respondent No.2 Smt. Neera Widge (DW2) has admitted in her evidenceinchief that the Will (Ex. PW 1/1) bears the signatures of her father. Thus, the evidence of Smt.Neera Widge (DW2) has lent material corroboration to the testimony of the attesting witnesses R.K. Samriya (PW1) and A.L. Khurana (PW2) that the Will (Ex. PW1/1) was signed by the testator. Nothing has been elicited in the cross examination of the said attesting witnesses to shake their credit. In addition to this, there is the evidence of the petitioner Virender Kumar Kochar (PW3) to the effect that the Will (Ex. PW 1/1) was executed by the testator and at that time he was in a sound disposition of mind. Thus, the testimony of Virender Kumar Kochar (PW3) has also corroborated the testimony of both the attesting witnesses of the Will (Ex.PW 1/1). The evidence of Virender Kumar Kochar (PW 3) further proves that

the Will (Ex.PW 1/1) was the last Will and testament of the testator. It needs to be highlighted that it is not the case of the respondents that the testator was not in a sound and disposing state of mind and memory at the time of the execution of the Will (Ex.PW 1/1).

7. Challenging the validity of the Will (Ex. PW 1/1), learned counsel for the respondents has catalogued the following suspicious circumstances surrounding its execution:

(i) No valid reasons are mentioned in the Will, why the testator's daughters (respondents) were being ignored;

(ii) The Will (Ex. PW 1/1) is written in seven pages. Except the last page, remaining pages did not bear signatures of the testator nor any one of the witnesses;

(iii) The writer of the Will did not come forward to give evidence.

8. It is undisputed that respondents No.2 and 3 are daughters of the testator and they have been excluded from inheritance under the Will. The testator has assigned the following reasons for their exclusion in para No.4 of the Will, which is as under :

'4. That I have two daughters, namely Smt.Sushma Mehra, wife of Shri Sudhir Mehra and Smt. Neera Widge, wife of Shri Satinder Widge. I have great love and affection for each of them. I have spent substantial amounts on their marriages and on other festive occasion and they are well settled in life. After due consideration I am not giving any legacy to them.'

9. In my opinion, the testator has assigned cogent reasons for excluding his daughters (respondents) from inheritance. Thus, the mere exclusion of the respondents from inheritance, does not create doubt regarding genuineness of the Will (Ex. PW 1/1).

10. It has come in the evidence of the respondent Smt.Sushma Mehra (DW1) that the testator was a graduate from Punjab University, that from 1945 to 1950, he

had worked as General Manager of Deorala Sugar Mill, that in 1950 he bought a coal mine at Jharia, that from 1953 to 1964, he worked as Manager, Hissar Textile Mill and that in 1966, he had started the business of stock and shares. She further testified that the testator was a legal minded person and he had also instituted civil suits against his tenants. Thus the evidence of Smt. Sushma Mehra (DW1) clearly shows that the testator was a man of affluence and social status and he had also easy access to competent legal advice. The aforesaid circumstances have also lent material corroboration to the testimony of P.K. Samriya (PW1), A.L. Khurana (PW2) and V.K. Kochar (PW3) regarding genuineness of the Will (Ex. PW 1/1). It is significant to mention that no plea has been taken by the respondents that the Will (Ex. PW 1/1) is the result of fraud, undue influence or coercion or that at the relevant time, the testator was not acting of his own free will. Thus, the evidence of P.K. Samriya (PW1) and A.L. Khurana (PW2) clearly proves that the Will (Ex. PW 1/1) was executed by the testator and they had attested it at the instance of the testator. The evidence of V.K. Kochar (PW3) proves that the Will (Ex. PW 1/1) is the last Will of the testator.

11. Learned counsel for the respondents contended that the Will (Ex. PW 1/1) was written on seven pages but all the pages except the last page did not bear any signatures of the testator nor of any one of the attesting witnesses and this circumstance alone is sufficient to raise a grave suspicion as regards the making of the Will (Ex. PW 1/1). In my opinion, the said submission of the learned counsel does not hold much water. It is pertinent to mention that respondent Sushma Mehra (DW1) has stated in her evidence in chief that the Will (Ex. PW 1/1) cannot be her father's Will because six pages of it do not bear her father's signatures. Respondent Smt. Neera Widge (DW2) has identified the testator's signatures on the last page of the Will (Ex. PW 1/1). As noticed earlier, both the attesting witnesses, namely, P.K. Samriya (PW1) and A.L. Khurana (PW2) have unequivocally stated in their statements that the Will (Ex. PW 1/1) was executed by the testator and they had attested it at the instance of the testator. Nothing has been elicited in their cross examination to show that execution of the Will (Ex. PW 1/1) was surrounded by suspicious circumstances. The respondents have challenged the genuineness of the Will (Ex. PW 1/1) on the sole ground of their exclusion from inheritance for which cogent reasons have been assigned by the

testator. In these circumstances, mere omission by the testator to sign each page of the Will (Ex. PW 1/1) does not throw a cloud of suspicion on the making of the Will by the testator.

12. Lastly, it was contended by the learned counsel for the respondents that nonproduction of the writer of the Will (Ex. PW 1/1) in the witness box raises a grave suspicion as regards the making of the Will. In my opinion, the aforesaid submission does not merit acceptance. The evidence discussed above clearly proves that the Will (Ex. PW 1/1) was executed by the testator and it is the last Will of the testator and there is not even an iota of evidence on record to show that its execution was shrouded in suspicion. In this view of the matter, the Will (Ex. PW 1/1) cannot be discarded on the ground of nonexamination of the writer of the Will. For the reasons discussed above, I find and hold that the Will (Ex. PW 1/1) was duly executed by the testator.

Issue No.2:

13. The evidence discussed above clearly proves that the Will (Ex. PW 1/1) is the last Will and testament of the testator. Consequently, the petitioners are entitled to grant of Probate of the Will (Ex. PW 1/1).

14. In the result, the petition is allowed under Section 276 of the Indian Succession Act and a probate of the Will dated 1851986 of late Sardari Lal Kochhar is granted in favor of the petitioners. No order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com