

Sh. Ved Prakash and ors. Vs. Smt. Natho Devi and ors.

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Court : Delhi

Decided On : May-13-2008

Reported in : 151(2008)DLT250

Judge : Pradeep Nandrajog, J.

Acts : [Indian Succession Act, 1925](#) - Sections 63; Delhi Land Reforms Act - Sections 86A

Appeal No. : FAO No. 8/1998

Appellant : Sh. Ved Prakash and ors.

Respondent : Smt. Natho Devi and ors.

Advocate for Def. : Maninder Acharya, Adv. for respondents 1 and 2 in FAO No. 8/1998 and ; Maninder Acharya, Adv. for respo

Advocate for Pet/Ap. : A.P. Aggarwal, Adv. in FAO No. 8/1998 and; Tirpat Singh, Adv. in FAO No. 47/199

Disposition : Appeal dismissed

Judgement :

Pradeep Nandrajog, J.

1. The two captioned appeals challenge an order dated 4.10.1997 allowing Probate Case No. 346/1988 holding that the propounders of the will Ex.PW-1/1 having successfully established that the will was the last legal and valid testament of late Chelu Ram were entitled to obtain letter of administration with a copy of the will annexed thereto.

2. The appellants of FAO No. 8/1998 are the children of late Smt.Govindi Devi. The appellants of FAO No. 47/1998 are the sons of late Smt.Angoori Devi. The 2 ladies were 2 out of the 6 daughters of late Shri Chelu Ram.

3. Late Chelu Ram died on 4.1.1986. His wife had pre-deceased him. He was blessed with 6 daughters and 2 sons.

4. His sons were Rattan Chand and Ramesh Chand, husbands of Natho Devi and Rajeshwari Devi respectively. His daughters were named Gobindo Devi, Gianwati, Bharto, Bharpai Devi, Angoori Devi and Chameli. His daughters Angoori Devi and Chameli had predeceased him.

5. Natho Devi and Rajeshwari Devi, the 2 daughters-in-law propounded a will dated 25.9.1985 and claimed that the same was executed by Chelu Ram in full senses and that the immovable property referred to in the will i.e. 2 bigha land comprised in Khasra No. 123 and 125 in the revenue estate of village Tajpul, New Delhi having constructed thereon 35 rooms were bequeathed to them in equal share. They claimed that the will in question was registered on 27.9.1985 in the office of the Sub-Registrar, New Delhi.

6. The will was opposed by Govindi Devi and the children of Smt.Angoori Devi. They alleged that the will in question was a forged and a fabricated document. Its genuineness and execution was denied. It was further pleaded that for more than 2 years before his death Chelu Ram was not mentally fit and that he was a patient of chronic asthma and had weak eye-sight.

7. Parties thus debated on the issue whether the will dated 25.9.1985 propounded by the daughters-in-law of the deceased was the last valid and legal testament of late Smt.Chelu Ram.

8. The will in question purports to be witnessed by 2 witnesses. Shri Moti Lal Jain, an advocate by profession who was examined as PW-1 and one Bhagwan Das, son of Ram Karan. The propounders of the will examined 3 witnesses namely Shri Moti Lal Jain, the stated attesting witness to the will as PW-1. Shri Anil Kumar, an officer from the office of the Sub-Registrar, Asaf Ali Road, New Delhi as PW-2 and Natho Devi as PW-3.

9. The objectors also examined 3 witnesses namely Ved Prakash as RW-1 who is the son of Govindi Devi and Satya Prakash and Jai Prakash, RW-2 and RW-3 who are the sons of late Smt.Angoori Devi.

10. Considering the testimony of PW-1 and PW-2, a finding has been returned by the learned Trial Judge that Natho Devi and Rajeshwari Devi had successfully established due execution of the will Ex.PW-1/1. The objections filed by the objectors have been held to be not proved.

11. The contentions noted by the learned Trial Judge as urged by the objectors are:

(a) A discrepancy in the age of the deceased as recorded in the will Ex.PW-1/1 and the death certificate Ex.PW-3/A where from it was sought to be urged that either the maker of the will being not aware of the actual age of the deceased was a person other than the deceased or alternatively it shows the weak mental status of the deceased.

(b) The fact of non-mentioning of Chameli Devi, the daughter of the deceased in the will and the argument predicated thereon that even this reveals that the deceased was not the maker of the will.

(c) That testimony of PW-1, Shri Moti Lal Jain did not establish due execution of the will Ex.PW-1/1 for the reason testimony of said witness failed to prove that the will was witnessed by 2 persons who signed as attesting witnesses.

12. The learned Trial Judge has held that the testimony of Moti Lal Jain, PW-1 who was a disinterested person established due execution of the will. The discrepancy in the age of the deceased as recorded in the will and the death

certificate has been explained by observing that age in the death certificate is recorded with reference to the information sent from the cremation ground and that to the authorities at the cremation ground information pertaining to the particulars of the dead person is given by the relatives who may not be in the exact knowledge of the age of the deceased. Learned Trial Judge has further noted that the 3 witnesses of the objectors namely RW-1, RW-2 and RW-3 have also given different versions regarding the age of the deceased at the time of his death.

13. Noting that the will refers, by name, to the sons and daughters as also the daughters-in-law of the testator and that Chameli Devi, admittedly was one of the six daughters born to the deceased has not been mentioned in the will, dealing with the argument that the same casts suspicion on the will, learned Trial Judge has noted that Chameli Devi was a pre-deceased daughter and probably for said reason no reference to her was made in the will. In other words, learned Trial Judge did not find exclusion of name of Chameli Devi in the will; not even a reference to her, as a suspicious circumstance.

14. The issue of non-proof of due execution of the will with reference to the testimony of PW-1 has been dealt with by the learned Trial Judge as urged and with reference to the testimony of Moti Lal Jain. It has been observed that Moti Lal Jain gave testimony qua the will on 30.9.1996 i.e. after more than 11 years of execution of the will and that trivial discrepancies were inconsequential.

15. At the hearing held on 8.5.2008 Shri A.P.Aggarwal and Shri Tirpat Singh, learned Counsel for the appellants reiterated the submissions made before the learned Trial Judge and additionally added 4 other submissions which counsel urged were advanced before the learned Trial Judge but were not considered while passing the impugned order.

16. With respect to the contentions urged before the learned Trial Judge, picking on the discrepancy in the age of the deceased as recorded in the will and the death certificate Ex.PW-3/A as also omission to note even name of Chameli Devi, the daughter of the deceased, it was urged that wrong recitals in a will casts suspicion thereon. With reference to the testimony of PW-1 it was sought to be urged that PW-1 ostensibly pointed out the signatures of Bhagwan Das as an

attesting witness at point 'C' on the will and that no signature existed at point 'C', much less of Bhagwan Das. It was thus urged that since, as against other documents, vide Section 63(c) of the Indian Succession Act 1925, the sine qua non for due execution of a will is attestation by 2 or more witnesses, the will Ex.PW-1/1 was witnessed by only one witness it was no will in the eyes of law.

17. It was further urged that the testimony of RW-1 established that relationship between the deceased and his sons were strained. Learned Counsel for the appellants urged that both RW-2 and RW-3, in their examination-in-chief deposed that the relationship of the deceased with his sons were strained and that the deceased was staying with them. Referring to the cross-examination of the 2 witnesses, learned Counsel urged that the testimony of RW-2 and RW-3 on said point remained unchallenged.

18. Secondly, it was urged that the will was scribed in English, a language which was alien to the deceased who had apparently executed the will by putting his thumb impression as also signatures in Urdu.

19. Thirdly it was urged that no positive evidence was brought on record to establish that the deceased was aware of the contents of the document.

20. Lastly it was also urged that it was against human conduct for the deceased to have deprived all his children under the bequest and solely bequeath the property to his daughters-in-law.

21. PW-1, Moti Lal Jain is the star witness of the propounders of the will. His testimony is important and being short, I intend to reproduce the same. It reads as under:

Shri Moti Lal Jain Advocate, Chamber No. 45, Patiala House Courts, New Delhi on SA:

I do not know anything about the will of late Shri Lachhu Ram again said Chelu Ram. I am Advocate by profession. I used to attest the will of a person who used to come me for getting his will drafted. During my entire practice as an advocate till today, I might have drafted 3/4 will in all and have also attested the same as one

of the attesting witness. As far as I recollect I had drafted and attested the last will of a person who was resident of Ram Nagar, Pahar Ganj, New Delhi. That person was my neighbour. I do not remember the name and particulars of the other persons whose wills I might have drafted or attested but I can tell the same after seeing the Will. (At this stage the witness wants to refresh his memory by seeing the will of late Sh.Chelu Ram referred hereto above.)

ORDER

Before the witness is shown the will in question let him reply to the following court questions:

CC1 Who else besides you had attested the will of Chelu Ram.

Ans. One Shri Bhagwan Dass had also attested his will?

CC2 Whether the will of Chelu Ram was got registered by you and also tell the place where it was written and executed.

Ans. The will was drafted by me at my chamber No. 45, Patiala House Courts and I got it registered also, at the office of the Sub-Registrar, Delhi.

(The witness is allowed to see the will in question.)

I have seen the will and now I can depose about the facts of the case.

Shri Chelu Ram had come to me in my chamber for drafting the will. I knew him previously also as I have dealt one of his cases before the SDM, at Parliament Street, New Delhi, under Delhi Land Reforms Act. I drafted the will at the instructions of Sh.Chelu Ram. When Chelu Ram visited me for drafting this will from his physical appearance, he did not seem to be ill, and he was of sound mind. I had drafted the will in my chamber. Chelu Ram has put his signatures in Urdu and also put his left thumb impression as well on the will at points A and B respectively. After he had put his signatures and thumb impression Bhagwan Dass, the other attesting witness and myself put signatures at points C and D respectively on the will. I also put my signatures under the words drafted by me at

point E. The will was drafted by me on 25.9.1985 and I accompanied Chelu Ram and other witness to the office of Sub-Registrar, Asaf Ali Road, on 27.9.1985 (27.9.85) to get the same registered. I was also present in the office of Sub-Registrar, Asaf Ali Road, at the time of the registration of the will. At that time, Bhagwan Dass and myself were the witnesses. I do not know whether Bhagwan Dass is alive or not at present. The will is Ex.PW-1/1 (objected to as to mode of proof).

xxxxx by Sh.Sanjay Aggarwal for (objector No. 3) LRs Ved Prakash, Jaswant Singh, Pooran Chand, Biro Devi and Vijay LRs of Govindi Devi.

The case was under Section 86A DLRs Acts in which he was served with a notice. I do not remember the exact date but it was prior to 1978. I might have noted his case in my diary of the relevant year. At present I am unable to trace my diary of that year since a long time has elapsed. I have to search that diary. It may be traceable and may not be traceable. I have never searched the diary regarding this case under DLR Act as I had no occasion to do. It is incorrect to suggest that I had never dealt with any case i.e. DLRs Act of late Sh.Chelu Ram.

I cannot tell the age of Chelu Ram of my own when I drafted his will Ex.PW-1/1 but he stated his age to be 75 years. I have not seen his date of birth or his birth certificate issued by Municipal authorities. By heart I do not remember the name of the father of Chelu Ram. I do not know about the date when Chelu Ram had expired. It is not in my knowledge whether late Sh.Chelu Ram was an Asthma patient. After his case was finished before the SDM court prior to 1978 he never met me. therefore, I cannot say whether he was ill or not. Since 1984 or whether he was confined to bed, again said he could not be confined to bed since 1984 because he came to my chamber in the year 1985 without any sign of illness. It is incorrect that he was not in a position to identify the objects due to his old age.

As to my understanding, his eye sight was not weak. He has signed the will in Urdu and also his thumb impression on the will. I have not enquired from him whether he was conversant with English language or not. I have not noted the date of the drafting of this will separately anywhere. The date is itself mentioned on the will. Personally I do not know Bhagwan Dass but I have seen him twice or

thrice in the company of Chelu Ram when he used to come to me in connection with his case under the Delhi Land Reforms Acts. The writing encircled in portion C of the will is in my hand. It is incorrect to suggest that the signatures of Chelu Ram at point A and his thumb impression at point B are not that of Chelu Ram. It is incorrect to suggest that Chelu Ram had not accompanied me to the office of Registrar, Asaf Ali Road, for the registration of the will. It is wrong to suggest that Ex.PW-1/1 is a forged document.

xxxx by Shri Deepak Kumar Advocate for Objector 7 - LRs of Smt.Angoori Devi.

It is correct that the will was prepared and signed on the same very day in my chamber No. 45, Patiala House Courts, New Delhi. Except registration, the will was completed in all respect in my chamber on 25.9.1985. It is incorrect to suggest that the testator had not come to my chamber or that I had gone to his house. I did not get verified from a medical officer about his mental condition, at the time of the thumb impression and signature which were obtained in my chamber on the will are forged.

22. To appreciate the testimony of PW-1, Mr. Moti Lal Jain and the submissions urged thereon by learned Counsel for the appellants it would be necessary to reproduce the will and the places marked as points 'A', 'B', 'C', 'D' and 'E' during testimony of PW-1. The same is as under:

L.T.I. of Sh.Challu Ram

LTI of Bhagwan Dass

'D'

Drafted by

Sd/-

Advocate

W I L L

I, Challu Ram son of Shri Molhar Ram, aged about 75 years, resident of House No. 310, Mathura Road, Badar Pur, New Delhi, declare this to be my last Will which I make this 25th day of September 1985, hereby revoking all other wills and codicils heretofore and made by me.

I am aged about 75 years, and I am in my full senses and not under pressure of any kind from any quarter. I am the absolute owner of two Bighas of land comprised in Khasra No. 123 and 125 of revenue estate of Village Tajpul, New Delhi which I have purchased from Shri Nihal vide a registered sale deed dated 26.8.57, Registered on 18.10.1957 with my own money and I had constructed 35 rooms and two rooms on the 1st Floor and 5 Shops over a part of this land with my self earned money. The entire property is my self acquired property. The vacant space is in my actual physical possession, while the constructed portion is partly self occupied and partly rented out. I have got two sons Rattan Chand and Ramesh Chand who are married and alive, and four daughters namely Gobindo Devi, who is now a widow, Gian Wati, Bharto, Bharpai Devi all married and are alive one of my daughter Angoori Devi had died after her marriage.

Natho Devi w/o Rattan Chand my son and Rajeshwari w/o Ramesh Chand my second son have been looking after me very properly during my old age.

I bequeath and devise all my money movable and immovable property wheresoever and whatsoever including the mentioned above, which I possess at present or which I may acquire during the period of my remaining life to my daughters- in - law Smt. Natho Devi and Rajeshwari Devi LTI of Bhagwan Dass

'D'

Drafted by

Sd/-

Advocate in equal share, absolutely to the exclusion of my sons and daughters and all the other persons. After my death Shrimati Natho Devi and Rajeshwari Devi will become full and absolute owners of all my moveable and immovable property which I may possess at the time of my death and they will be entitled to

use and deal with such property as they will wish without any interference from any person whosoever he or she may be.

In witness whereof I the said Chelu Ramput my signatures to this my Will and to each sheet of this my will contained in this and in the preceding one sheet of paper the day and the year first above written.

Point 'B'

Point 'A'

LTI of Sh.Chelu Ram

Sd/-

Testator

(Chelu Ram)

Signed by the above named Chelu Ram in our presence at the same time and each of us has in the presence of the testator signed in his name hereunder as attesting witnesses.

Witnesses:

'C'

1. Bhagwan Dass S/o

Sh.Ram Karan

r/o H. No. 342 Badarpur, New Delhi.

2. Sd/-

MOTI LAL JAIN

ADVOCATE, NEW DELHI.

'E'

23. Pertaining to the submissions made by learned Counsel for the appellants predicated on the discrepancy in the age of the deceased as recorded in the will and the death certificate Ex.PW-3/A as also the omission of any reference to Chameli Devi in the will, suffice would it be to note that the reasons given by the learned Trial Judge are reasonable and the reasons of a prudent person. After all, the deceased came from a rural background where people are not very meticulous in keeping a track of their age. Further, it does happen that at the cremation ground any near relative gets recorded the age of the deceased which may be on the basis of a rough recollection by the relative who gave the information. It is true that apart from Chameli Devi, another daughter of the deceased, Angoori Devi had pre-deceased him and that the will notes the existence of Angoori Devi and not of Chameli Devi; but, the material difference between the two daughters is that Chameli Devi had pre-deceased Chelu Ram by about 25 years and Angoori Devi had pre-deceased him just a few years prior to the date when Chelu Ram executed the will. Hazy memories of a daughter who was no longer in the world of living for 25 years could be a reason for Chelu Ram not to mention about Chameli's existence.

24. Pertaining to the testimony of PW-1, Mr. Moti Lal Jain, from his testimony, as noted in para 21, it is obvious that Mr. Moti Lal Jain was attempting to be not honest to the cause which he was representing evidenced by the fact his introductory testimony is wayward. It is important to note that only when he was put searching questions by the Court did he uttered the truth.

25. The introductory testimony of Mr. Moti Lal Jain shows that he was attempting to feign ignorance about any will of Chelu Ram. This is evidenced by the fact that he remained evasive about Chelu Ram or his will. He wanted to refresh his memory by perusing the will. Before he could refresh the memory, 2 questions were put to him by the Court. How well he answered the same with reference to the will has left me wondering as to how the witness, who did not even remember Chelu Ram or his will, without looking at the will, answered that besides him one Bhagwan Dass had attested the will. He also remembered that he was the

draftman of the will. He remembered that he had drafted the will at his chamber in Patiala House Courts. He also remembered that he had got the will registered.

26. The identification of the signatures of the executant and the witnesses on the will has thus to be appreciated in light of the fact that Mr. Moti Lal Jain, the advocate who was the draftsman of the will was attempting to be not straight forward in his testimony.

27. I have not only noted the contents of the will in para 22 above but have also recorded the place where the thumb impression of Chelu Ram were found affixed as also the points where Chelu Ram had appended his signatures as also the place where Bhagwan Dass had affixed his thumb impression as also the points where Mr. Moti Lal Jain had appended his signatures on the will.

28. Obviously, there are no signatures of Bhagwan Dass at point 'C', the place identified by the lawyer where Bhagwan Dass ostensibly appended his signatures as an attesting witness. This is evident to the naked eye and needs no elaboration. But a thumb impression is to be found adjacent to the place on the will where name, parentage and address of Bhagwan Dass is scribed.

29. As noted above, in his examination-in-chief Mr. Moti Lal Jain, in response to the Court question had stated that Bhagwan Dass had signed as an attesting witness to the will.

30. I agree with the view taken by the learned Trial Judge that the testimony of PW-1 establishes due execution of the will, more so, for the reason the witness stated that the testator was his old client and that he i.e. PW-1 had drafted the will under the instructions of his client.

31. The contention that there is evidence to establish strained relationship between the deceased and his sons on account of RW-2 and RW-3 not being cross examined pertaining to their statements in the examination-in-chief where they stated that the relationship between the deceased and his sons were strained, to my mind is picking on straws of no substance. Merely because a particular statement of a witness has not been subjected to cross examination

does not ex post facto lead to the conclusion that the said statement is truthful. What better evidence can exist of no strained relation other than the fact that the deceased was living in the same house in which, along with him, his sons, his daughters-in-law and 2 daughters were residing.

32. The fact that the will was scribed in English, a language unknown to the testator is neither here nor there for the reason PW-1, the lawyer who had drafted the will has categorically stated that he drafted the will under instructions of his client who had come to him not for the first time but was a previous client for whom he was representing a cause pertaining to a litigation under the Delhi Land Reforms Act. It would also be important to note that the will in question is a registered will and at the rear appears the endorsement of the Registrar before whom the will was registered to the effect that the executant had acknowledged before the Registrar that the contents of the document were explained and understood by the executant.

33. The plea that there is no positive evidence on record to establish that the deceased was aware of the contents of the will runs in the teeth of the testimony of PW-1, who has categorically deposed that the deceased, Chelu Ram, had visited PW-1 for purposes of getting the will drafted and that from his physical appearance he seemed to be in good mental and physical health. The witness categorically stated that he drafted the will at the instructions of Chelu Ram who put his signatures as also his left thumb impression at point 'A' and 'B' respectively in token of execution of the will. Since everything happened in the office of the counsel it is obvious that the lawyer drafted what was told to him by the client.

34. The last submission that the will is unnatural needs to be dealt with.

35. The unnatural nature of the will alleged is the exclusion of the sons from the bequest. But, the argument ignores that the bequest is in favor of the 2 wives of the 2 sons. It is obvious that the deceased made a bequest in favor of the branches of his 2 sons. Why did he do so? It is irrelevant and need not be answered for the reason law is clear. As long as there exists sufficient evidence to sustain a will, it is not for the Court to probablize the reasons as to why the testator did, what he did.

36. I find no merits in the appeals.

37. The appeals are dismissed.

38. No costs.

39. LCR be returned forthwith.

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