

Gangadas Vs. Moolchand and anr.

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Court : Rajasthan

Decided On : Jan-22-1974

Reported in : 1974WLN(UC)225

Judge : S.N. Modi, J.

Appeal No. : S.B. Civil First Appeal No 61 of 1972

Appellant : Gangadas

Respondent : Moolchand and anr.

Disposition : Appeal dismissed

Judgement :

S.N. Modi, J.

1. This is an appeal by Gangadas Under Section 299 of the Indian Succession Act, 1925, against the order of the District Judge, granting Probate in respect of the will dated 25-6-65 executed by deceased Haridas. The following pedigree table will reveal the relationship of the parties:

Girdharilal

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Achaldas Haridas Mathuradas Gangadas Mst. Mangi

(dead) (Deceased (dead) (Appellant (respdt.

testator) | Caveator) No. 2

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Swaroopprakash Moolchand

(respdt. No. 1)

Deceased Haridas was a bachelor, Achaldas and Mathuradas had predeceased Haridas. Girdharilal died long ago Haridas died on 17-10-65. In the absence of any will left by Haridas, the property of Haridas would have devolved on Gangadas being the brother. Haridas had very good relations with Pratapchand. On 18-6-65 Haridas went to Gwalior (Laskar) to attend the marriage of Pratap chand's son. The marriage party went to Nagpur where the marriage was celebrated on 21-6-65. Haridas went to Nagpur with the marriage party and returned back to Gwalior on 23-6-65 On 24-6-65 Haridas fell ill at Gwalior. He, however, became alright on the night intervening 24th and 25th June, 1965 On 25-6-65 he expressed his desire to execute a will in favour of his nephew Moolchand. Haridas thereupon dictated draft of the will to Pratap Chand. The latter got it typed by his son Amarparain. Haridas then signed the will in the presence of Pratapchand and Sohanlal, both of whom attested it. The will was left with Pratapchand. After one or two days, Haridas came back to Jodhpur. It may be mentioned here that Moolchand was not at Gwalior along with Haridas On reaching Jodhpur, Haridas expired on 17-10-65. Pratapchand came to Jodhpur in December 1965 and when he visited the house of Haridas he came to know about the death of Haridas. He then disclosed to Swaroop Prakash and his mother that Haridas had executed the will at Gwalior in favour of Moolchand and that will was lying with him. Pratapchand then sent that will in registered envelope addressed to Moolchand in

the last week of December 1965. Moolchand then filed an application for grant of Probate of will on 2-11-66 in the Court of the District Judge, Jodhpur, Gangadas filed an objection on 1-9-67 against the grant of probate on the ground that the will was a forged one. He also pleaded that he was the nearest heir of Haridas and was entitled to succeed to his property. It was also pleaded that the application for grant of probate was not maintainable because the affidavits of the attesting witnesses were not filed along with the application. It was also pleaded that Pratapchand was a debtor of the deceased Haridas and in order to save himself from repayment of debt Pratapchand colluded with Moolchand and created a forged will. On the pleadings of the parties, the main issue which was framed by the court below was whether Haridas executed the will at Gwalior on 25-6-65 in favour of Moolchand. The learned District Judge after a detailed discussion of the evidence led by the parties reached the conclusion that the will Ex. 1 is a genuine document and it was executed by Haridas in his fit disposing state of mind and body on 25-6-65. He accordingly allowed the application and granted to Moolchand probate of will Ex. 1 in respect of the properties left by deceased Haridas. Gangadas has now come up in appeal to this Court against the aforesaid judgment of the learned District Judge.

2. Neither Moolchand nor his counsel appeared before me to contest this appeal. It is strenuously contended on behalf of the appellant that there exists no satisfactory evidence to prove that deceased Haridas executed the will Ex. 1 at Gwalior on 25-6-65. It is contended that Haridas was a resident of Jodhpur and it was highly improbable that he would execute a will at Gwalior where he had gone for a temporary purpose for attending the marriage of Pratapchand's son. It is also contended that on 25-6-65 several persons from Jodhpur were present in the house of Pratapchand and it is unlikely that none of the residents of Jodhpur who were available in the same house were not asked to attest the will. It is also contended that had the will been executed on 25-6-65, its existence should have been ordinarily disclosed soon after its execution. In the present case, it is contended that none of the party knew about the will till Pratapchand happened to visit Jodhpur in the month of December 1965. It is also contended that the application for grant of probate was filed after considerable delay and that shows that probably the will was manufactured after the death of Haridas. In my opinion,

none of these circumstances is sufficient to dislodge the positive and convincing evidence led by Moolchand to show that the will was executed by Haridas on 25-6-65 in a sound disposing state of mind. Haridas at the time of the execution of the will was 64 years old. When he suddenly fell ill at Gwalior he thought it proper to execute a will without any loss of time. He accordingly asked Pratap Chand to get a will prepared as soon as he recovered from his illness. As already pointed out above, though Pratapchand was not related in any way to Haridas, he was a fast friend of Haridas and therefore he left the will with Pratap Chand. It further appears from the statement of Pratap Chand that Hari Das told him not to disclose about the execution of the will, the reason might be that he did not want to incur the displeasure of his brother Gangadas during his life time. That is further corroborated by the statement of Moolchand who says that Haridas after his return from Gwalior told him that he had executed a will in his favour but directed him not to disclose this fact to any person. I find therefore nothing unusual if the will was executed at Gwalior and it was left with Pratapchand, his trusted friend. The whole grievance of the appellant is that Pratapchand fabricated the will in order to deprive the heirs of Haridas from recovering the debt due from him. Pratapchand has denied that he was indebted to Haridas. He has also explained the letter Ex. A/1/PW/4 which was shown to him during cross-examination. There is not an iota of evidence to show that Moolchand colluded with Pratap Chand and got this will fabricated in his favour. It is true that Pratap Chand did not disclose about the execution of the will by Haridas during the life time of Haridas but merely on that account it cannot be said that the will was forged later on after the death of Haridas. Pratapchand has explained why he did not disclose the fact of execution of the will and his explanation that he was so directed by the deceased Haridas appears to me to be a reasonable explanation in the circumstances of the case. From the testimony of the two attesting witnesses, Pratapchand and Sohanlal, it stands proved that the will was executed by deceased Haridas in his sound disposing state of mind & after fully understanding its implications. There is further evidence of Mool Chand and his brother Swaroop Prakash which shows that the signature of Hari Das, appearing on the will Ex. 1 is of Hari Das. Both of them have stated that they are acquainted with the signatures of Hari Das and the will Ex. 1 contains the signature of Hari Das between A to B. In rebuttal, there is no

evidence except that of Gangadas who has denied that the will Ex. 1 bears signature of Haridas. It is true that some residents of Jodhpur were available at the house of Pratapchand at the time the will was executed and none of them was called to attest the will. The obvious reason for this, to my mind, was that Haridas did not want to make it known to any person of Jodhpur that he had executed the will as he did not like to the displeasure of his brother Gangdas during his life time. Again, the fact that the application for grant of probate was filed after a great delay is, in my opinion, no circumstance for holding that the will is a forged one. The learned Dist. Judge has discussed the evidence at length and I entirely agree with him that the will Ex. 1 was the last will of deceased Haridas and was executed by him in sound disposing state of mind. The circumstances pointed out by the learned Counsel are wholly insufficient to disprove that the will was not executed by Haridas.

3. The learned Counsel for the appellant next contended that the application for grant of probate was not maintainable as it was not verified by at least one of the attesting witnesses to the will in the manner specified Under Section 281 of the Indian Succession Act, 1925. Section 231 provides that where the application is for probate the petition shall be verified at least by one of attesting witnesses to the will if available. In the present case, it is common ground between the parties that none of two attesting witnesses resided at Jodhpur at the time when the application was presented. It can therefore very well be said that no attesting witness to the will was procurable at the time of the filing of the application for probate. That apart, the provisions contained in Section 281 are merely directory and not mandatory. Simply because the application was not duly verified in accordance with Section 281, it cannot be thrown out. This point, it appears, was not pressed before the lower court & had it been so pressed, the petitioner would have remedied the defect by calling one of the attesting witnesses to verify the petition in the manner provided Under Section 281.

4. No other point has been pressed before me. The appeal fails and it is dismissed. Since the respondent has not chosen to contest this appeal, I leave the parties to bear their own costs.

