

Shakuntala Devi Vs. Savitri Devi and ors.

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Court : Himachal Pradesh

Decided On : Jan-11-1996

Reported in : AIR1997HP43

Judge : R.L. Khurana, J.

Acts : [Succession Act, 1925](#) - Section 63 and 63(C)

Appeal No. : Regular Second Appeal No. 445 of 1989

Appellant : Shakuntala Devi

Respondent : Savitri Devi and ors.

Advocate for Def. : K.D. Sood and; B.K. Sood, Advs.

Advocate for Pet/Ap. : Bhupender Gupta, Adv.

Disposition : Appeal allowed

Judgement :

R.L. Khurana, J.

1. This appeal has been directed by the defendants against, the judgment dated 1-7-1989 of the District Judge, Una, allowing the appeal of the plaintiffs against the judgment and decree dated 22-10-1986 of the Sub Judge 1st Class, Amb, District Una and granting a decree for joint possession to the extent of 1/2 share in the

land in dispute.

2. The admitted pedigree table of the parties is as under:--

Inder

Bansi Lal

||||

Shakuntla Devi Satya Devi Savitri Devi Bhagwanti

daughter daughter, daughter, daughter.

Defendant No.1. Defendant No.2. Plaintiff No.1.1 |

|

||||

Hem Raj Ved Prakash Vijay Shamla

Kumari Kumari

(Plaintiffs 2 to 5)

Bansi Lal son of Inder owned and possessed the following lands in village Badoh Bhadarkali, Tehsil Amb, District Una:--

(a) 1/2 share in the land measuring 95 Kanals 18 Marlas comprising of Khewat No. 532, Khatauni Nos. 1291 to 1296;

(b) 1/4 share in the land measuring 36 Kanals 13 Marlas comprising, of Khewat No. 534 Khatauni Nos. 1302 to 1308;

(c) 1/8 share in the land measuring 5 Kanals 18 Marlas comprising of Khewat No. 537 Khatauni Nos. 1338 to 1343.

The total land thus falling to the share of said Shri Bansilal was 57 Kanals 17 Marlas. Bansilal, above named, during his lifetime made certain gifts and sale of a part of the land owned by him. Such gifts and sale are not being disputed by the plaintiffs. After deducting the land gifted away and sold by said Sh. Bansilal, land measuring 18 Kanals 3 Marlas, as detailed in the headnote of the plaint and hereinafter referred to as the 'land in dispute', was left with him. Bansilal died on 13-9-1980. The defendants got a mutation of inheritance qua the land in dispute sanctioned in their favour on the basis of a will alleged to have been executed in their favour by deceased Bansilal.

3. The plaintiffs have challenged the said will alleged to have been executed by deceased Bansilal in favour of the defendants. It was averred that no will was executed by the deceased Bansilal in a sound disposing mind in favour of the defendants. The will, if any, is a result of forgery and not binding on the interest of the plaintiffs, who are entitled to succeed to the extent of 1/2 share in the land in dispute being the natural legal heirs of the deceased Bansilal along with the defendants.

4. The defendants resisted and contested the suit by averring that the deceased Bansilal in a sound disposing mind had executed a valid will in their favour of 12-5-1980 and that the mutation of inheritance was rightly sanctioned in their favour on the basis of the said will. It was, further stated that the will was executed by the deceased in their favour in lieu of the services rendered by them to the deceased.

5. On the pleadings of the parties, the following issues were framed by the trial Court: --

1. Whether the plaintiffs are the natural heirs of deceased Bansilal along with defendants? OPP

2. Whether the deceased Bansilal executed a valid will dated 12-5-1980 in favour of defendants? OPD

3. Whether the suit is bad for non-joinder of necessary parties? OPD
4. Whether the suit has been properly valued for the purpose of court fee and jurisdiction? OPD
5. Whether the plaintiffs have no locus standi to file this suit? OPD
6. Relief.

6. The learned trial court found Issues Nos. 2 and 5 in favour of the defendants. It was held that deceased Bansilal had executed a valid will dated 12-5-1980 in favour of the defendants. While, deciding Issue No. 1 in favour of the plaintiffs the trial court came to the conclusion that the plaintiffs are the natural heirs of the deceased Bansilal along with the defendants. Issues Nos. 3 and 4 were found against the defendants. Consequent upon such findings, the suit of the plaintiffs was dismissed by the trial Court vide judgment and decree dated 22-10-1986.

7. Feeling aggrieved by the judgment and decree dated 22-10-1986 of the trial Court, the plaintiffs went up in appeal before the District Judge, Una, who allowed the appeal, set aside the judgment and decree of the trial court and granted a decree for possession to the extent of 1/2 share of the land in dispute in favour of the plaintiffs, by holding that no valid will was executed by deceased Bansilal in favour of the defendants.

8. I have heard Sh. Bhupender Gupta, Advocate, learned counsel for the defendants and Sh. K.D. Sood, Advocate, the learned counsel for the plaintiffs and have also gone through the record of the case.

9. Ext. D.1 is a 'will' dated 12-5-1980, alleged to have been executed by deceased Bansilal in favour of the defendants. This will has been scribed by DW. 2 Kesav Ram. S/Sh. Sher Singh and Amar Chand, DW.3 and DW. 4, respectively, are the true attesting witnesses thereof. The lower appellate Court while holding the will Ext. D.1 to be invalid, has come to the conclusion that the suspicious circumstances surrounding the execution of the will have not been satisfactorily explained by the defendants, the propounders of Ext.D.1. The following suspicious circumstances have been relied upon by the first appellate Court:--

(a) reasons for excluding the plaintiffs from inheritance having been found to be false;

(b) DW. 3 Sher Singh one of the attesting witnesses being ignorant of the contents of the will;

(c) date of the execution of the will doubtful;

(d) the will was kept secret for about nine months after the death of the testator; and

(e) contradictions appearing in the depositions of the legatee Smt. Satya Devi, the scribe and the attesting witnesses of the will.

10. A perusal of the will Ext.D.1 shows that the reason for making the will in favour of the defendants is recited that both the defendants had been rendering services to the deceased testator by staying with him even after their marriage, and that no services were being rendered by the plaintiffs. This reason given for excluding the defendants from inheritance and for making the will in favour of the defendants has been found to be false from the evidence coming on the record.

11. In para 368, at page 485 of Mulla Principles of Hindu Law, Fifteenth Edition, it has been commented in the following terms:--

'There is nothing to prevent a Hindu from so disposing of his property by will as to defeat the rights of his sons, wife, or other legal even to the extent of completely disinheriting them. No express words are necessary to dis-inherit the heirs; it is sufficient if the property is bequeathed to some other person(s).'

12. Therefore, under the law, no reasons are required to be given by a testator for disinheriting one or more of his natural legal heirs while making the will. The question, which next arises, is that if reasons for disinheriting a particular legal heirs are given in the will and such reasons are found to be false, whether the same would constitute a suspicious circumstances shrouding the execution of the will.

13. The above question came up for consideration before the High Court of Patna in *Mrs. S. Misra v. Sm. Mangala Kumari Devi*, AIR 1946 Patna 415, and it was held that even if the recital contained in the will is incorrect or even un-true, the will nevertheless is a valid will.

14. In *Susama Bala Devi v. Anath Nath Tarafdar* AIR 1976 Cal 377, the testator had disinherited his three elder sons while making the will in favour of his younger son, stated in the will that he was dis-inheriting his three elder sons on account of their misbehaviour with their mother. This reason given by the testator of disinheriting his three elder sons was found to be false. Relying upon the ratio laid down by Patna High Court in *Mrs. S. Misra's case* (AIR 1946 Pat 415) (*supra*), it was held by the High Court of Calcutta, as under (at p 386 of AIR):--

'..... Therefore, untrue statement contained in the Will by itself constitutes no ground to hold the Will invalid or unreal if its due execution is otherwise proved and there be no other unexplained suspicious circumstances. It is also true that inequity of disposition by itself is no ground to hold the Will invalid. If it is permissible to say so, we might say that most Wills contain some elements of inequitable disposition, if intestacy is considered to be the valid and normal disposition of a deadman's property. But all these things will have to be considered along with other suspicious circumstances surrounding the execution of the Will. If other suspicious circumstances are there which are unexplained then inequitable disposition and untrue statements contained in the will would go to add further volume to the suspicious circumstances that the will is not a genuine document.'

15. The High Court of Punjab and Haryana in *Atma Singh v. Smt. Guro* 1983 Cur LJ (C & Cri) 75, where the recital in the Will that the testator had no sister was found to be false, held that making of an intentionally wrong statement in the will cannot cast any doubt on the contents Of those parts thereof by which the property is bequeathed in the Will.

16. In the present case as well, simply due to the fact that the recital made in the will that services were being rendered to the deceased testator Bansi Lal by the defendants and that no services were being rendered by the plaintiffs, having been found false, will not be a suspicious circumstance on the contents of that part of

the Will by which the land in dispute was bequeathed in favour of the defendants.

17. The next suspicious circumstances relied upon by the District Judge is that DW.3 Sher Singh one of the attesting witnesses, was not even aware of the contents of the will. Admittedly, the Will Ext.D.1 was executed in favour of the two defendants. DW. 3 Sher Singh has stated in his cross-examination that the Will was executed only in favour of one daughter who was residing with the testator to render services to him. The District Judge has drawn the inference that since DW.3 was not aware of the contents of the Will, this witness cannot be said to be present at the time of the alleged execution of the will, and that he had signed the same subsequently without having been approached by the testator in this regard.

18. Under the law, it is not necessary that the attesting witnesses should know the contents of the Will, The testator need not disclose the nature and contents of the instrument. Attestation does not mean that the attesting witnesses should have the knowledge of the contents of the will. It is also well settled that the attesting witnesses need not be present at the time of the execution of the Will by the testator. Clause (c) of Section 63, Indian [Succession Act, 1925](#), provides:--

'(c) The will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the will or has seen some other person sign the will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses shall sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.'

19. A bare reading of the abovesaid provision shows that attestation is valid when the same is attested by the witnesses after having received from the testator a personal acknowledgment of his signature or mark on the Will.

20. In the present case, it is in the statement of DW 3 that he was present when the Will was executed. The testator had signed the same in his presence and he has attested the Will as a witness in the presence of the testator. Therefore, the

mere fact that DW.3 Sher Singh could not correctly give the contents of the Will Ext. D.1, will not be a suspicious circumstance.

21. The Will Ext.D.1 is shown to have been executed by deceased Bansi Lal on 12-5-1980. Admittedly, Bansi Lal had died on 13-9-1980, that is after about four months of the execution of the Will Ext. D.1. The defendant Smt. Satya Devi as DW. 1 has stated that her father Bansi Lal remained ill for about 15-16 days before his death. She has further stated that when the Will Ext.D.1 was executed, even then her father used to remain ill. In her examination-in-chief, she has stated that the Will was executed about six months before the death of Bansi Lal. Though DW. 2 Kesav Ram has stated that the deceased Bansi Lal had died 15/20 days after the execution of the Will Ext.D.1, will not mean that the Will was not executed on the day, it is shown to have been executed. Similarly, it has come in the evidence of DW. 4 Amar Chand that deceased B'ansi Lal might have died about eight months to one year after the execution of the Will Ext.D.1. It is significant to note that neither DW.2 Kesav Ram, the scribe of the Will Ext.D.1, nor DW.4 Amar Chand one of the attesting witnesses, is related to the deceased Bansi Lal. They are rustic villagers. They appeared in the court for making a statement about six years after the execution of the Will Ext.D.1. Therefore, it cannot be expected that they would remember the minute details of the facts of a particular case. The contradiction coming with regard to the death of deceased Bansi Lal in the statements of DW.2 and DW. 4 will not be a suspicious circumstance against the validity of Will Ext.D.1.

22. As stated above, the testator Bansi Lal had died on 13-9-1980. The Will Ext.D.1 was produced by the defendants before the Patwari for getting the mutation entered on its basis on 25-5-1981 after a period of about nine months of the death of the testator. This period of about nine months is not long enough, so as to cast a shadow of doubt on the genuineness of Will Ext.D. 1, in the absence of evidence to show that the defendants failed to produce the Will Ext.D.1 prior to 25-5-1981 in spite of having an opportunity to do so.

23. The District Judge has relied heavily on the contradictions appearing in the depositions of DW.1 Satya Devi, DW. 2 Keshav Ram, DW 3 Sher Singh and DW.4

Amar Singh with regard to the execution of the Will. Such contradictions, which are of minor nature, will not be a suspicious circumstance. The memory fades away with the passage of time and when evidence is being given after a lapse of six years, the witnesses cannot be expected to make a parrot like statement on each and every minor aspect of the case. Therefore, the District Judge has erred in relying upon such minor contradictions coming in the statements of various witnesses.

24. The learned counsel for the plaintiffs by placing reliance on the decision of this Court in *Milkhi Ram v. Smt. Surmoo Devi*, (1993) 1 Sim LC 118, has contended that since the natural heirs namely, a daughter and the children of a pre-deceased daughter were disinherited, the Will Ext. D.1 is surrounded with suspicious circumstance.

25. The Hon'ble Supreme Court in *Smt. Sushila Devi v. Pandit Krishna Kumar Missir*, AIR 1971 SC 2236, has held that prima facie, the circumstance that no bequest was made to the natural heir (s) by the testator would make the will appear unnatural, but if the execution of the Will is satisfactorily proved, the fact that the testator had not bequeathed any property to one of his children cannot make the Will invalid.

26. Again, in *Rabindra Nath Mukherjee v. Panchanan Benerjee (dead) by LRs.*, (1995) 4 SCC 459: (AIR 1995 SC 1684), it has been held by the Hon'ble Apex Court that deprivation of natural heirs should not raise any suspicion because the whole idea behind execution of will is to interfere with the normal line of succession. So natural heirs would be debarred in every case of will; of course, it may be that in some cases they are fully debarred and in others only partially. The Hon'ble apex Court in the said case, where the will was executed by the testator in favour of the sons of a half-blood brother by excluding the descendants of a full blood sister, held the Will to be valid and that disinheritance of the descendants of a full blood sister could not have been taken as a suspicious circumstances.

27. The execution of the Will stands duly proved by DW.2 Kesav Ram, DW.3 Sher Singh and DW.4, Amar Chand. All these witnesses are independent witnesses. There is nothing on record to show that they are having any interest in the

legatees. Nor there is any evidence to show that they are in any way inimical towards the plaintiffs. No evidence has been led on behalf of the plaintiffs to show that deceased Bansi Lal was not having a sound disposing mind at the relevant time.

28. Therefore, considering the entire evidence coming on the record in its totality, I hold that a valid Will Ext. D. 1 was executed by deceased Bansi Lal in favour of the defendants, while in a sound disposing mind on 12-5-1980.

29. As a result, the present appeal is allowed. The impugned judgment and decree dated 1-7-1989 of the District Judge, Una is set-aside and the judgment and decree dated 22-10-1986 of the trial Court is restored. The parties are left to bear their own costs.

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