

**Asha Rani. Vs. Sandeep and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/906549](http://sooperkanoon.com/906549)

**Court :** Delhi

**Decided On :** Nov-24-2010

**Judge :** Mool Chand Garg, J.

**Acts :** Indian Succession Act - Section 63

**Appeal No. :** FAO.No.302/2010

**Appellant :** Asha Rani

**Respondent :** Sandeep and ors.

**Advocate for Pet/Ap. :** Mr.J.S. Rawat, Adv.

**Judgement :**

1. Whether reporters of Local papers may be Yes allowed to see the judgment?
2. To be referred to the reporter or not? Yes
3. Whether the judgment should be reported in Yes the Digest?

## **ORDER**

1. The appellant as well as the respondents propounded two different Wills alleged to have been executed by Late Sh. Ram Chander who was the father of respondents and father-in-law of the appellant.

2. An important issue which needs reference is that the appellant was married to Sh. Jai Bhagwan, son of the deceased Ram Chander on 27.06.1985. Thereafter, Sh. Ram Chander expired on 10.10.1985. The appellant propounded the Will dated 30.08.1985 while the respondents propounded Will dated 22.12.1982 which is a registered Will.

3. The appellant filed Probate Petition No. 144/2006 and the respondents filed a separate probate petition No.143/2006.

4. After service was complete and citations were issued in respect of both the cases, following issues were framed by the learned ADJ: "1. Whether the deceased Sh. Ram Chander Dawar had validly executed the Will dated 22.12.1982 while in sound disposing mind and that the said Will is the last will and testament of the deceased? OPP

2. Relief

While in petition No. 144/206, issues as mentioned below were framed on 25.02.2002.

## **ISSUES**

1. Whether the deceased Sh. Ram Chander had validly executed the Will dated 30.08.1995 while in sound disposing mind?

2. Relief"

5. The learned ADJ decided the two petitions by a common order dated 23.03.2010 and held that Will dated 30.08.1985 propounded by the appellant was shrouded with suspicious circumstances whereas the Will dated 22.12.1982 propounded by the respondents was a validly executed Will and thus, while dismissing the petition filed by the appellant being Probate Petition No.144/2006 granted probate with respect to the Will dated 22.12.1982 in favour of the respondents.

6. While deciding issue No.1, the learned ADJ observed that the Will dated 30.08.1985 is shrouded with suspicious circumstances. It has been observed that:

"Some circumstances noted by this Court, make Will Ex.PW2/B suspicious, which are enumerated as:-

(a) This will is shown to have been executed on 30.08.1985. As per petitioner Smt. Asha Rani. She had found the Will in the year 1996, when she was searching an almirah in her house. There is no gain saying that petitioner was residing in same house and was having access to that almirah, in which Will is stated to have been kept by the Testator.

(b) Hand writing expert from Forensic Science Laboratory, Delhi (PW 3A) found many differences in the signatures in the name of testator in this Will (Ex. PW2/B) after comparing admitted signatures of same testator i.e. Mark A-1 A4.

(c) The petitioner was married to Sh. Jai Bhagwan (a son of testator) on 19.07.85 and the testator died on 10.10.1985 i.e. within three months of marriage of petitioner. If contents of will in question are taken as true, the testator was driven to execute it in favour of Smt. Asha Rani as the latter was residing with him and she had served him a lot. As per respondents, after her marriage, the petitioner remained in her matrimonial house for 2-3 days and went to her parents. She came after 3-4 days and remained for about 20 days. Even during said period, Ram Chander (testator) shared mess with Puran Chand Dawar. Smt. Asha Rani went again to her parents house on 15th August and returned in first week of September 1985. In this way, she remained in the company of testator for some days only. Apart from same, it is deposed by respondents that the testator was annoyed with husband of petitioner Sh. Jai Bhagwan. The latter having taken away the ornaments of family. In such a case, testator could not be expected to execute will in favour of his wife.

(d) Will Ex. PW2/B is unregistered will while will relied upon by respondent was registered in the office of sub registrar, Delhi. Considering facts discussed above, this will is shrouded by suspicious circumstances. On the other hand, from the statements of witnesses examined by respondents particularly RW1 and 2 who

are stated to be attesting witnesses of the Will, it is well established on record that deceased Ram Chander Dawar validly executed the will on 22.12.1982.

Petition filed by Asha Rani is thus dismissed while petition filed by Sh. Sandeep Dawar etc. is allowed."

7. As regard the Will dated 22.12.1982 relying upon the testimony of Sh. K.K. Dawar, RW1, Sh. Puran Chand, RW-2 who are attesting witnesses to the Will dated 22.12.1982, the respondents also relied upon the statement of Sh. Sandeep Kumar, RW-3 who deposed that the Will in question was duly executed by Late Sh. Ram Chander and that it was a registered Will and on that basis he even filed ejectment case against the tenant as well as accepting the proof of registration on the testimony of Babu Lal RW3/A who is a UDC in the office of Sub- Registrar. The learned ADJ also took note of the admission made by the appellant about the signatures of Late Sh. Ram Chander on the Will being that of her father-in-law. Reliance has also been placed by the ADJ upon the report of an expert from FSL who also supported that the Will was bearing signatures of Late Sh. Ram Chander. Taking all these facts, the learned ADJ held that the Will dated 22.12.1982 was a duly executed Will which observation has been assailed by the appellant in this appeal.

8. According to the appellant, the Will dated 30.08.1985 could not have been discarded and, that being a subsequent Will executed by the deceased testator, the learned ADJ committed an error in having not granted letters of administration with respect to the aforesaid Will in favour of the appellant. It is also submitted that the grant of letters of administration qua Will dated 22.12.1982 in favour of the respondents was not justified. The grounds to assail the judgment as pleaded are that:-

i) The trial Court went wrong in having not considered the evidence produced by the appellant on record which proves that the Will dated 30.08.1985 was duly executed.

ii) No evidence was brought on record by the respondents casting aspersions on the evidence led by the appellant regarding execution of the said Will.

iii) Neither there are pleadings nor evidence on record which may contain allegations that the Will dated 30.08.1985 was executed in suspicious circumstances. As such it is submitted that the findings returned by the learned ADJ that the Will dated 30.08.1985 was executed in suspicious circumstances is not sustainable.

iv) It is also submitted that the appellant was not even granted opportunity to rebut the alleged suspicious circumstances.

9. It is stated that it was incumbent upon the learned ADJ to have framed a specific issue as to "Whether the Will dated 30.08.1985 was executed by deceased Ram Chander in suspicious circumstances". However, no such issues were framed.

10. It is also submitted that the Will dated 30.08.1985 has come to the notice of the appellant in the year 1996 while searching her almirah. The appellant has further submitted that the lower Court has failed to give findings on issue No.1 as framed by him, and that reliance by the trial Court on expert opinion Ex. PW3/A is not binding in law inasmuch as the said opinion is full of contradictions and inconsistencies. Moreover, Jai Bhagwan was not authorized on behalf of the appellant and, therefore, he could not have made any statement on her behalf. His statement could not have been, therefore, used against the appellant.

11. As regards the execution of the Will in her favour, the appellant contended that love and affection does not depend upon the duration of the time spent, thus, the observation made that the appellant remained in the company of the testator for some days to cast suspicion in the execution of the Will dated 30.08.1985 was not justifiable. Reference has been made in this regard to a judgment of Honble Supreme Court in *Niranjan Umeshchandra Joshi v. Mrudula Jyoti Rao & Ors.* 2007 (I) AD (S.C.) where it has been held that "Existence of suspicious circumstances alone may not be sufficient. The Court may not start with a suspicion and it should not close its mind to find the truth. A resolute and impenetrable incredulity is demanded from the judge even there exist circumstances of grave suspicion ."

12. It has been submitted that the Will dated 30.08.1985 was duly proved. There is nothing on record to show that the deceased Ram Chander was not in sound and disposing mind while executing the alleged Will and in this regard no suspicious circumstance has been brought on record by the respondents in their objections dated 10.10.2009. With these objections, the appellants have prayed to set aside judgment dated 20.03.2010 passed in P.C. No.144/2006 and to allow her appeal by granting letters of administration with regard to the Will dated 30.08.1985 with Will annexed.

13. I have considered the submissions made on behalf of the parties. I have also gone through the written synopsis on behalf of the appellant. In the written submissions, the appellant has reiterated the assertions made in the grounds of appeal. Primarily, the appellant has submitted that there was full justification for the testator to have executed the Will dated 30.08.1985 in her favour because:-

i) The testator lived and took food with the appellant till his death after her marriage with the son of the appellant on 27.06.1985

ii) The testator was not happy with his children and thus, did not bequeath any property to his children.

iii) The testator was having a sound and disposing mind at the time of his death when he was in the house of the appellant.

iv) P.C. No.143/2006 was filed by the appellant on 09.09.1996 while P.C. No.144/2006 was filed by the respondent after receipt of summons from the Court in January, 1997. v) The report of RW-3A, the handwriting expert is vague and full of contradiction which cannot be relied upon. It is stated that the investigation by the expert has been done without proper photo enlargements of letters of admitted and disputed signatures.

14. On behalf of the respondents, it has been argued that the order in question is fully justified. The circumstances pointed out by the learned ADJ goes to show that the Will propounded by the appellant is shrouded by suspicious circumstances and does not meet the test of due execution as provided under Section 63 of the Indian

Succession Act which reads as under:

"63 - Execution of unprivileged Wills:- Every testator, not being a soldier employed in an expedition or engaged in actual warfare, [or an airman so employed or engaged,] or a mariner at sea, shall execute his Will according to the following rules:-

(a) The testator shall sign or shall affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction.

(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a Will.

(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 acknowledgement 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."

15. It is submitted that:-

i) the case set up by the appellant is highly improbable as it is unaccepted that a Will of the property belonging to the testator would have been executed just after few days of the marriage of the appellant.

ii) the Will propounded by the appellant is not a registered Will whereas the Will propounded by the respondents is a duly registered Will and was executed in 1982, the execution whereof has been proved by the attesting witnesses who have appeared in the witness box and have stood cross-examination.

iii) The filing of the probate petition by the appellant based upon the Will dated 30.08.1985 which was not surfaced by her till the filing of the probate petition

bearing No.143/2006 which was filed on 09.09.1996, cast aspersions about the genuineness of the Will, because there was no reason for the appellant to have waited for filing of the probate petition by respondent No.1, who were relying upon the Will dated 22.12.1982 which Will is duly registered and which has also been acted upon by the respondents while filing an eviction petition against the tenant.

16. At the outset, I may observe here that while the Will dated 22.12.1982 is a typed Will having signatures of the attesting witnesses with proper attestation and it has been registered on 22.12.1982 i.e. soon after its execution, I find that the Will dated 30.08.1985 is not a registered Will. In this Will there is a reference to the Will dated 22.12.1982 despite that, the appellant did not thought it appropriate to file the probate petition immediately. She has also not informed the other legal heirs about the Will dated 30.08.1985 prior to their filing of the petition bearing No.143/2006.

17. As far as signatures of Sh. Ram Chander on the Will dated 22.12.1982 are concerned, the signatures are not even disputed by the appellant, thus, execution of the Will dated 22.12.1982 stands duly proved. It is registered. The only question, therefore, was as to whether the Will dated 30.08.1985 was executed by the deceased testator and it was executed out of his own free will and that there are no suspicious circumstances which may cast doubts or clouds over the execution of that Will. The Will is stated to have been executed just a few days after the marriage of the appellant with the son of the deceased and the deceased expired within a few days thereafter. It is in this context, I would try to analyse the reasoning given by the learned ADJ in holding that the execution of the Will dated 30.08.1985 was shrouded with suspicious circumstances.

18. I have already noticed various reasons given by the learned ADJ in this regard let me analyze the reasons given. It has been observed by the learned ADJ that according to the appellant, she found the Will dated 30.08.1985 in an almirah in 1996 even though she had been residing in the same house and was having access to that almirah in which the Will is stated to have been kept. I would, further, add that the actual date when the appellant had come to know about the will in question has not been stated by her in her statement appearing as witness

in the Court. She has appeared as PW2. The relevant portion of her statement is reproduced hereunder:

"1. That the deponent is the petitioner in the above noted case and well conversant with the facts and circumstances of the present case.

2. That the deponent is the daughter-in-law of Late Shri Ram Chander Dawar who got married to Mr. Jai Bhagwan on 27/6/1985 and having two sons that Late shri Ram Chander was expired on 10/10/1985 and at the time of death, my lae father-in-law was living with me. The death certificate of my father-in-law late Shri Ram chandr Dawar is Exhibit PW-1/A.

3. That at the time of the death, my father-n-law was having the normal helath and mental conditions and was not suffering from any infirmity.

4. That in the year 1996, I was searching the almarh which was containing the old documents and found some papers. I handed over those papers to papers to my husband who got them to read over to his friend Mr. Baldev Raj who told us that my father-in-law had executed a will dated 30/08/1985 in my favour. The Original will is Exhibit PW-2/A. and the Hindie translation copy of the same is Exhibit PW-2/B. The schedule of the properties mentioned in the will is Exhibit PW-1/B. That my father-in law late Shri ram Chander Dawar executed the will dated 30/08/1985 in sound disposing mind without any coercion or undue influence by canceling all previous wills and bequeathed the properties as mentioned in the Schedule of the properties of total value of ` 67,872.50/- (Exhibit PW- 1/B) annexed with the petition in my name. the will dated 30/08/1985 was the last will and testament executed by my father-in-law late Shri Ram Chander Dawar. That my Election Identity card is Exhibit PW-1/C.

5. That I and my husband filed this case on the advise of my counsel late Shri S.K.Somani who advised us to file the present petition and Exhibit PW-1/E which is correct and true."

19. Another important circumstance, rightly noticed by the learned ADJ, was that she was married to Jai Bhagwan, son of the deceased testator on 27.06.1985 and

on 10.10.1985 the testator expired. Execution of the Will by the testator in favour of daughter-in-law, who was newly wedded on 30.08.1985 i.e. just after one month or so itself casts a doubt on the execution of the said document. As regards, the plea taken by the appellant that he served the deceased testator who expired on 10.10.1985 i.e. after three months of his wedding was a reward for the service rendered, the learned ADJ noted that the appellant remained in her matrimonial house for about 2-3 days and went to her parents house thereafter. She then came again and remained for about 20 days. Even during said period, Ram Chander (testator) shared mess with Puran Chand Dawar. The appellant went again to her parents house on 15.08.1985 and returned in the first week of September, 1985. As such she remained in the company of testator for some days only.

20. Moreover, it has also come on record that the testator was annoyed with the husband of the appellant who had taken away the ornaments of the family. In such a circumstance, it was not expected of the testator to have executed the Will in favour of the wife. Admittedly, the Will is an unregistered Will and the handwriting experts opinion found many differences in the signatures of the name of the testator in this Will Ex.PW2/1 which report has been given after comparing the admitted signatures.

21. I may also make a reference to the deposition of the handwriting expert in this regard, who has deposed:-

"RW4: Sh. Devak Ram, Senior Scientific Officer (Documents) FSL, Rohini:

On S.A.

I have been working in FSL for the past about twenty- seven years and as reporting officer since 2001. It is correct that EX.RW4/A has been prepared by me which bears my signature at point A. I have examined the documents i.e. Q1 to Q7 and standards A1 to A4 and gave my opinion that the person who wrote A1 to A4 also wrote Q1 to Q6. Q7 was not written by the person who wrote A1 to A4. The detailed reasons have been mentioned in my report which is true and correct. "

22. I have also compared the signatures of the deceased on the Will Exhibit PW2/A and Exhibit PW1/B. A comparison of the two signatures also goes to show that the signatures appearing on the Will dated 30.08.1985 to be that of the deceased testator is not free from doubt. In any event, there is no explanation coming forward from the side of the appellant as to why she has not examined the handwriting expert to remove the cloud in this regard.

23. The Will propounded by the appellant is in Urdu. The only witness to prove the execution of the Will is Sh. Ram Kishan, PW-1. In his cross-examination, he has deposed as under: "I do not know how many Will have been executed by Ram Chander in his life time. I am residing at House No.509, Paharganj, New Delhi. It is correct that property No.565-A is not my residence. But it is a shop . I do not know who wrote the Will Ex.PW2/A and it was not written in my presence. I do not know in whose handwriting the said Will in Urdu was written.

I do not know Urdu. I do not know whether Ram Chander was having a personal Almirah for keeping his personal belongings etc. did not attend tehervi of Ram Chander. It is wrong to suggest that my signatures were obtained on Ex.PW2/A after the death of Sh. Ram Chander. It is wrong to suggest that it is a forged Will.

24. From the aforesaid testimony, it is apparent that PW-1 is not a witness to the preparation of the Will, he does not know what are the contents of the Will, he does not know Urdu language and he, therefore, cannot be believed to be a witness to the execution of the Will whereas the execution of the Will dated 22.12.1982 is duly proved by the witnesses examined on behalf of the respondents. The said will is registered also.

25. In these circumstances taking note of the provisions contained under Section 63 of the Indian Succession Act which provides the way in which the attestation of the Will and execution thereof should be done by the testator so as to enable the Court to clear its conscience regarding due execution of the Will and applying the principle of preponderance of probability in the facts of this case, the judgment delivered by the learned ADJ is sustained as it does not suffer from any error on the face of it and gives cogent reasons for discarding the Will dated 30.08.1985 and making the Will dated 22.12.1982 rule of the Court.

