

Surinder Kumar Grover Vs. State and ors

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Court : Delhi

Decided On : Jan-24-2011

Judge : Mool Chand Garg, J.

Acts : Evidence Act - Section 68; Indian Succession Act - Section 63

Appeal No. : FAO 269/2006

Appellant : Surinder Kumar Grover

Respondent : State and ors

Advocate for Def. : Mr. Rajiv Bahl, Adv.

Advocate for Pet/Ap. : Mr. R.K. Jain, Adv.

Judgement :

1. Whether the Reporters of local papers may be allowed Yes to see the judgment?

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

1. The short point involved in this matter is as to whether the Will, subject matter of the probate alleged to have been executed by late Sh K.K.Grover, has been proved or not in accordance with law. The execution of a Will can be proved by following provisions contained under Section 68 of the Evidence Act which reads

as under:

"Section 68 - Proof of execution of document required by law to be attested If a document is required by law to be attested, it shall not be used as evidence until 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:

[Provided that it shall be necessary to call an attesting witness in proof of the execution of any document, not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied."

2. However, how a Will is to be executed is provided for under Section 63 of the Succession Act which reads as under:

"Section 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."

3. A bare perusal of the aforesaid Section and in particular Section 63(c) shows that a Will has to be attested by at least two witnesses who should see the testator putting their signatures on the Will in their presence and the testator to see attestation of the Will by the two witnesses named therein.

4. It is the submission of the appellant that despite proof of the execution of the Will in accordance with provisions contained under Section 63 of the Succession Act and Section 68 of the Evidence Act, the Court has not granted the probate and therefore has committed error. It is therefore requested that the order passed by the Addl. District Judge refusing to grant the probate be set aside.

5. On the other hand it is the case of the respondent that in this case the execution of the Will has not been proved by the appellant in accordance with law. It is stated that firstly the propounder of the Will has not been able to prove that the Will was attested by two witnesses. It is stated that even if it is presumed that one D.P.Singh also put his signatures on the Will, his putting signatures on the Will would not mean attestation of the Will as per the requirement of Section 66 (c) of the Act as the evidence of Champa Khanna as an attesting witness does not complete the requirement of Section 68 of Evidence Act as she has not stated about the attestation of the Will by the second witness or testator having signed in presence of both witnesses. Reference can be made to the statement made by PW1 who deposed as under:

"PW1 Smt. Champa Khanna aged 70 years, Ram Pd. Khanna, housewife R/o B-226, Dorawala, Delhi.

I do not know English. The Will Ex.PW1/2 was executed at Kashmere Gate near the Sub Registrar Office. The will was written by the advocate. I do not know the name of the said advocate. Myself and Krishan Kumar had gone to the office of Sub Registrar, Kashmere Gate, Delhi for execution of the said will, Ex.PW1/2. First draft of Ex.PW1/2 was prepared by the advocate and thereafter the said will was got typed by the advocate from the typist. The will was not typed in my presence. The said will was typed in the presence of Krishan Kumar Grover, by the typist. It

is wrong to suggest that the said will Ex.PW1/2 was not got typed in Kashmere gate courts. It is wrong to suggest that the said will Ex.PW1/2 was written by Veena wife of the petitioner. I do not know where the kaccha draft of Will Ex.PW1/2 is. Myself and Krishan Kumar Grover had appeared from the Sub Registrar for registration of the said will. I do not remember the name of the sub-Registrar before whom we had appeared. It is wrong to suggest that myself and Krishan Kumar Grover did not appear before the Sub-Registrar for registration. I do not remember the time when we appeared before Sub-Registrar for registration of the said will. Volunteered it was in the morning time. Myself and Krishan Kumar Grover were only two persons who appeared before Sub-Registrar for registration. I do not know what is written in the said will but the contents thereof were read over and explained to me by Krishan Kumar Grover in Kashmere Gate. Sub Registrar had enquired from Krishan kumar Grover about the execution of the said will and krishan Kumar Grover admitted the contents of the said will as correct. It is wrong to suggest that Krishan Kumar Grover had not signed on the Will Ex.PW1/2 at points A. Krishan Kumar Grover had affixed his thumb impressions on the said will Ex.PW1/2 at points B on the seat of the advocate. We did not got to the hospital on the date of execution of the said will. Krishan Kumar Grover has three sons and four daughters. It is correct that Krishan Kumar Grover (hereinafter to be referred as K.K.Grover) had nose cancer for the last more than 20 years and my daughter was not married by them. I do not know before the Sub- Registrar who had affixed the rubber stamps and how many rubber stamps were affixed at the time of registration of the said will. The advocate who had drafted the said will had also affixed his rubber stamps. It is wrong to suggest that the said advocate Shri D.P. Singh, had not gone before the Sub Registrar for registration purposes. It is correct that before Sub Registrar D.P. Singh, Adv. had appeared and he was questioned about it. I do not remember whether his statement was recorded before the Sub-Registrar, or not. I do not know the name of the advocate who had drafted the will but I can identify him. The said advocate had signed before the Sub Registrar. It is correct that Shri D.P. Singh, Advocate had identified K.K. Grover before the Sub-Registrar.

We returned back at 2 PM from the office of Sub- Registrar after execution and registration of the said will. Surinder Kumar Grover had not accompanied us to the

office of Sub Registrar for registration of the said Will. It is wrong to suggest that the said will Ex.pw1/2 was not executed in my presence. It is wrong to suggest that I had signed on the said Will Ex.PW1/2 at the instance of my son-in-law Surinder Kumar Grover. I do not remember exact the time when we had appeared before the Sub Registrar but it was 1 PM or 1.30 PM. It is wrong to suggest that I am deposing in this case because my son-in-law Surinder Kumar Grover is the sole beneficiary under the said will. The Will Ex.PW1/2 was presented before Sub Registrar by K.K.Grover.

Q. I put it to you that the said will Ex.PW1/2 was produced before the Sub Registrar and Sub Registrar registered it? What have you to say?

Ans. The contents of the said will were admitted by K.K.Grover before Sub Registrar and then he had signed before the Sub Registrar.

Krishan Kumar Grover was able to walk. It is correct K.K. Grover had come to my house and had taken me to the office of Sub Registrar, Kashmere Gate, Delhi on three wheeler scooter."

6. It is stated on behalf of respondent that reading together the provisions of Section 63(c) of the Succession Act with Section 68 of the Evidence Act it is clear that even if the propounder wishes to rely upon the testimony of the one of the attesting witness the said attesting witness is obliged to prove that the execution of the Will was done by the testator in accordance with requirement of that Section, i.e., the Will was attested by two witnesses and that the testator signed in presence of those two witnesses and those two witnesses signed in presence of the testator. The factum of such execution must be proved by the witnesses who are brought in the Court. It is stated that in this case reading the examination-in-chief of the Champa Khanna with cross-examination conducted upon her does not meet the requirement of Section 63.

7. Reference has also been made to a judgment of the Honble Supreme Court in the case of Janki Narayan Bhoir v. naraya Namdeo Kadam AIR 2003 SC 761 wherein the Honble Supreme Court with respect to the execution of the Will in relation to its proof under Section 68 of the Evidence Act has been pleased to

make the following observations:

"On a combined reading of Section 63 of the Succession Act with Section 68 of the Evidence Act, it appears that a person propounding the will has got to prove that the will was duly and validly executed. That cannot be done by simply proving that the signature on the will was that of the testator but must also prove that attestations were also made properly as required by Clause (c) of Section 63 of the Succession Act. It is true that Section 68 of Evidence Act not say that both or all the attesting witnesses must be examined. But at least one attesting witness has to be called for proving due execution of the Will as envisaged in Section 63. although Section 63 of the Succession Act requires that a will has to be attested at least by two witnesses, Section 68 of the Evidence Act provides that a document, which is required by law to be attested, shall not be used as evidence until one attesting witness at least has been examined for the purpose of proving its due execution if such witness is alive and capable of giving evidence and subject to the process of the Court. In a way, Section 68 gives a concession to those who want to prove and establish a will in a Court of law by examining at least one attesting witness even though will has to be attested at least by two witnesses mandatorily under Section 63 of the Succession Act. But what is significant and to be noted is that that one attesting witness examined should be in a position to prove the execution of a will. to put in other words, if one attesting witness can prove execution of the will in terms of Clause (c) of Section 63, viz., attestation by two attesting witnesses in the manner contemplated therein, the examination of other attesting witness can be dispensed with. The one attesting witness examined, in his evidence has to satisfy the attention of a will by him and the other attesting witness in order to prove there was due execution of the will. If the attesting witness examined besides his attestation does not, in his evidence, satisfy the requirements of attention of the will by other witness also it falls short of attestation of will at least by two witnesses for the simple reason that the execution of the will does not merely mean the signing of it by the testator but it means fulfilling and proof of all the formalities required under Section 63 of the Succession Act. Where one attesting witness examined to prove the will under Section 68 of the Evidence Act fails to prove the due execution of the will then the other available attesting witness has to be called to supplement his evidence to make it complete in all

respects. Where one attesting witness is examined and he fails to prove the attestation of the will by the other witness there will be deficiency in meeting the mandatory requirements of Section 68 of the Evidence Act."

8. The Trial Court while refusing the grant of probate has made the following observations:

"21. In this case the advocate M.P. Singh put his rubber stamp which reads drafter by M.P. Singh, so the intention of the advocate is very clear that he is signing the will only in the capacity of drafter of the will and not as an attesting witness.

22. To prove the intention of the advocate that he signed it as an attesting witness, the petitioner should have examined the advocate who would have deposed that he signed it as an attesting witness. He has not been examined in the court as a witness and document as it stands shows that he signed the will in the capacity of drafter of the will and not as an attesting witness.

23. If the attesting witness examined in the court besides his attestation does not satisfy the requirement of attestation of the will by other witness, it falls short of attestation of the will by two witnesses, for the simple reasons that execution of the will does not merely mean the signing of it by the testator but it means fulfilling and proof of all the formalities required under Section 63 of Indian Succession Act.

24. The statement of only attesting witness Smt. Champa Khanna also cannot be relied because she is an interested witness. The beneficiary under the Will is her son-in-law. She was not on visiting terms with testator for pretty long time. The deceased was aged about 75 years at the time of his death and was suffering from several ailments. It is not believable that he would go to the house of Smt. Champa Khanna, take her along in a three wheeler scooter in the office of Sub Registrar. Krishan Grover get the documents drafter typed and executed in her presence on three different occasions. On 26.4.1993, he took her for execution of will Ex.PW1/1, On 28.04.93 for canceliation of the will in favour of Satish Grover and on 13.9.1993 again for execution of a fresh will in favour of petitioner. Every time he would take Smt. Champa Khanna who herself is an old lady to the office of Sub Registrar that too alone in a three wheeler scooter. Hence, I hold that the will

Ex. PW1/2 is not a validly executed will."

9. In addition to the above the Court below also observed suspicious circumstances as under:

"25. There are suspicious circumstances in which this will is said to have been executed and the circumstances also suggest that deceased was not in sound disposing mind while executing the will Ex.PW1/2 for the simple reason, simple reason that he executed three wills in a short period of about seven months, first will was executed by him in favour of Satish Grover on 23.02.1993, second will was executed by him in favour of petitioner on 26.04.1993, another will was executed by him on 13.09.1993. This itself is sufficient to raise suspicion about the mental state of the testator. He could not decide whether to bequeath this property to his one son or to the other, as he was already suffering from cancer as well as paralytic attack. It appears that he was pleasing every son with whom he was staying or that every son with whom he stayed was compelling him to execute a will in his favour because the rapid succession in which it has executed three wills suggest that either the testator was not in a sound state of mind to decide what to do with his property or different wills were executed by him under duress and pressure and under the circumstances that with whomsoever he was staying, was compelling him to bequeath his property in favour of that person. In both the circumstances the will ex.PW1/2 is not a valid will of the deceased executed by him in sound disposing mind without any coercion, threat or fear. The circumstances in which the will is executed in favour of the petitioner also raise suspicion about the genuineness of the will. One will was executed in his favour on 26.04.1993 bequeathing entire property to him, where was the necessity to execute another will on 13.09.1993.

26. Throughout his life deceased was living with his son Satish Grover no reasonable ground is assigned in his will Ex.PW1/2 to divest him from legacy of his father. Similarly, I have perused the cancellation deed Ex.PW4/1. There is no reason given for cancellation of the will dated 23.02.1993 except that under some unavoidable circumstances and family decision he was revoking and cancelling the will which was duly registered before the sub registrar. Nowhere in the

cancellation deed he has written that after execution of the will in favour of Satish Grover, Satish Grover has stated ill-treating him or is not caring for him or looking after him, hence it leads to only inference that this cancellation deed which was witnessed by Smt. Champa Khanna was also executed under undue pressure or threat or under unstable mind condition I have perused the public notice Ex.PW5/4. It reads "My client Shri K.K. Grover son of Shri Mukand Lal Grover, resident of H-4/5, Model Town-II, Delhi-9 declared that his previous public notice disinheriting his younger son Shri Surinder Kumar Grover aged 41 years, is withdrawn and cancelled. He declares that his son Shri Surinder Kumar Grover is under his full control and obedience and is entitled to all his properties movable or immovable. His other sons, their wives, daughters and the legal heirs are debarred from al his properties by this public notice of my client."

(Rakesh Dhingra)

Advocates,

144, Shakti Vihar,

Delhi

This public notice is proved on record by the petitioner. This document can be read against him without ay further evidence and proof. By proving this document the petitioner himself is admitting that at some stage he was debarred form inheriting the properties of his father by his father. It means the father was not happy when he disinherited him. Now, the father came to reside with him on 17.04.1993 for the first time in his life and executed a will in his favour bequeathing all is movable and immovable properties on 26.04.1993 (Will Ex.PW1/1). Within nine days no rational thinking father would become so happy with such a son that he would debar al his other legal heirs from inheriting his properties and would bequeath everything in favour of such a son that in short span of nine days and thereafter he would undergo a spree of moving applications in different courts withdrawing different suits and petitions against him. Either the person who does this is not of sound mind or he is doing so under coercion. The documents proved on record show that father was contesting his ejectment petition against the

present petitioner claiming that his deceased wife executed a will in his favour with regard to house No. H-4/5 Model Town, Delhi and all of a sudden he goes to the court and make a statement that whatever he was telling to the court was not the truth and he admitted the will in favour of his son with regard to the house of Model Town. No sane person can act in this manner. IN suit for Dissolution of partnership and Rendition of Accounts, an award was passed by Shri D.R.Khanna arbitrator on 11.03.1992 which was made rule of the court by Shri S.K.Mahajan, the honble Judge, as he then was, on 21.03.1996. Objections in that case were filed by the present petitioner even when the award was made rule of the court. On 13.05.1993 deceased moved an application for setting aside the award passed by justice S.K.Mahajan claiming therein in the application that his original suit for dissolution of partnership and Rendition of Accounts was false, only shows that the deceased was not acting in a sound disposing mind and every decision of his was compelled or manipulated by the present petitioner."

10. In view of the aforesaid, the Trial Court has refused to grant the probate and has dismissed the probate petition.

11. I have heard the parties and have also gone through the record, the impugned order as well as the written synopsis of the appellants. A perusal of the Will goes to show that the Will has been signed by only one attesting witness, Smt. Champa Khanna and no second witness has signed the Will. Though it is claimed by the appellant that the advocate, Sh. D.P.Singh who had drafted the Will is the second attesting witness but the two rubber stamps as well as the signatures of Shri D.P.Singh, advocate, on two places at page No 6 of the original Will only goes to show that he drafted the Will in the capacity of the drafter and not as an attesting witness.

11. No doubt the drafter of the Will is also competent to sign the Will as an attesting witness but it must be proved from the document itself that it was signed by the drafter in the capacity of an attesting witness as attesting is more than signing. Attesting means signing a document for a particular purpose and the purpose being that by putting his signature the witness testifies that the executant had signed the document in his presence. Therefore unless there is an intention in

the mind of the person who puts his signature on the document, mere placing a signature would not amount to an attestation. Hence the Ld ADJ was right in holding that the drafter of the Will was not the attesting witness. Further to prove the intention of the advocate that he signed it as an attesting witness, the appellant should have examined the advocate, which has not been done by the appellant.

12. It may also be observed that if the attesting witness examined in the court besides his attestation does not satisfy the requirement of attestation of the Will by other witness , it falls short of the attestation of the Will by two witnesses, for simple reasons that there should be fulfillment and proof of all the formalities required under Section 63 of Indian Succession Act. In the instant case statement of only attesting witness St. Champa Khanna cannot be relied because she was an interested witness, the beneficiary under the Will is her son-in-law. Further her statement that the deceased who was 75 years old and suffering from several ailments took her along with him and got the documents drafted typed and executed on three different occasions i.e on 26.01.1993 he took her for execution of the Will Ex. PW1/1, on 28.04.1993 for cancellation of the Will in favour of Satish Grover and on 13.09.1993 again for execution of a fresh Will in favour of the appellant could not be believed and therefore the lower Court was right in holding that the Will was not a validly executed Will.

13. Further the respondent Sh. Satish Kumar Grover in his affidavit has stated that he had filed a complaint case Ex. OW1/3 against the appellant and he had further submitted that an order was passed by MM for production of deceased father in the Court and the SHO of concerned police station was directed to file the status report about the health of the father and he reported that at the time of his visit the father was lying half naked on a bed in one room on the first floor. His physical condition was such that he would collapse any moment, meaning thereby that no medical treatment was given to him in the house of the appellant though the deceased testator was in a very critical state of health. Thereafter with the permission of the Court respondents admitted the deceased testator in hospital and bore all his medical expenses after which within a month the deceased testator died. Hence it cannot be said that the Will was executed by the deceased in sound and disposing mind and the same was a valid Will of the testator. The

relevant extract of his affidavit is produced here under:-

"9. As against this evidence of the petitioner, objector Satish Kumar filed his affidavit Ex.P1 wherein he deposed that father had been residing with him since 1971 till 17.04.1993; in House No. 64 Tagore Park, N.Delhi; on which date he was abducted by Shri Surinder Kumar Grover from the park in Model Town. The entire family was initially residing in H-4/5 Model Town which was owned by their mother. In 1971 they shifted to house No. 65 Tagore Park. His father was physically disabled due to having suffered a paralytic attack in 1988 and was severally effected due to pain and agony of his nose cancer which was at advance stage at that time. Further, he deposed that the alleged will does not bear the thumb impression of his deceased father. The same is forged and fabricated by the petitioner in connivance with his wife Veena and mother-in-law Smt. Champa Khanna. Further, he deposed that deceased never resided with the petitioner of his own free will. Petitioner first abducted him on 17.04.1988 and then kept him under wrongful confinement till he was admitted in the hospital under direction of the Honble High Court. The petitioner even forged a will of the mother for which a case was pending against him in the Honble High Court. The petitioner never gave any respect to his parents and due to his attitude and conduct he was involved in litigation with his father which continued till fathers death and due to all this litigation father was compelled to debar him from his properties and he never withdrew the said public notice during his life time and the petitioner even did not withdraw the case filed by him against the father during the life time of the father. The father was even compelled to file cases against him for dissolution of partnership, arbitrator was appointed by Honble High Court and petitioner filed objections against the award of the arbitrator. The award was in favour of the deceased father and the objections filed by him were never withdrawn by him during the life time of the father. Since his separation from the family, after his marriage, the parents never visited him and no relations were kept with his in-laws also. The parents were not even on speaking terms with the in- laws of the petitioner. Neither the petitioner nor his in-laws were invited or any family function. The condition of the father was very critical when he was confined in one room by the petitioner in his house and the objector had to move the court for giving proper treatment to the father. When the will is alleged to have been executed by the

father in favour of the petitioner, he was not even in sound disposing mind due to paralytic attack, nose cancer and other ailments. He was not in a position to move of his own hence there was no question of his executing any Will, it is deposed that when this objector came to know about the critical condition of the father he along with his brother Ravinder went to Model Town but they were not permitted to meet their father. Therefore, he lodged a complaint with the police and filed a complaint case Ex.OW1/3. In the said case Ld. MM called the police report and under the orders of the Honble High Court of Delhi father was got admitted in Sunder Lal Jain hospital where he breathed his last on 4.11.1994.

10. Relevant part of cross examination of this witness is that this witness was not aware that how many total wills were executed by this father during his life time, father was not residing with him on 13.9.1993. At that time he was abducted by the petitioner and resided in Model Town. He admitted that since 17.4.1993 father was living in Model Town and continued residing there till his admission in the hospital. No police complaint was lodged by him regarding kidnapping of his father by the petitioner. Will Ex.PW1/2 was not executed in his presence, neither he was present at the time of registration of the will. He denied the suggestion of Will Ex.PW2/1 was the last and genuine will of his father. He also denied the suggestion that his father had issued a citation in Punjab Kesri disowning from inheritance of his property after his death. He admitted the suggestion that his father used to go for walk in Central Park almost every day till 1993. The distance between Tagore Park and Central Park was about one furlong. He also admitted that normal working of his father was not effected due to nose cancer."

14. Thus in the light of the observations made by the ADJ as discussed above and for the reasons given by me, I am satisfied that the appellant has not been able to lead evidence regarding the execution of Will in question in accordance with Section 63(c) of the Indian Succession Act nor the appellant has been able to lead enough evidence to prove the execution and attestation of the Will in accordance with the provisions of Section 68 of the Indian Evidence Act. There is no explanation as to why the appellant has not taken any step to summon the second witness. The statement of the only attesting witness cannot be relied upon regarding the attestation of Will by the second witness. In facts and circumstances

discussed above, it also gets proved that the testator was not in sound and disposing mind while executing the Will in favour of the appellant. There are suspicious circumstances also which have also not been cleared by the appellant. Hence in such circumstance the Ld. ADJ was correct in dismissing the probate petition and I do not find any infirmity in the order.

15. The appeal is dismissed with no orders as to cost. CM No.7200/2009

The costs as directed to be paid by the appellant to the respondent vide order dated 04.02.2009, if not already paid, the same shall be paid to the respondent.

Application stands disposed of.

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