

Ajit Singh Vs. State and ors.

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Court : Delhi

Decided On : Apr-25-2013

Judge : V.K.Shali

Appellant : Ajit Singh

Respondent : State and ors.

Judgement :

* HIGH COURT OF DELHI AT NEW DELHI + FAO No.104/2009 & CMs 4242-4243/2009 Decided on :

25. h April, 2013 AJIT SINGH Through: Appellant Counsel (appearance not given) Versus STATE & ORS. Respondents Through Ms.Neha Kapoor, proxy counsel
CORAM: HONBLE MR. JUSTICE V.K. SHALI V.K. SHALI, J.

(ORAL) 1. This is an appeal filed by the appellant against judgment dated 2 nd January, 2009 passed by the learned Additional District Judge dismissing the probate petition of the appellant.

2. Briefly stated the facts of the case are that the appellant and the respondent Nos.2 and 3 are the sons of Late Sh.Jhandu Singh. Jhandu Singh and his brother namely Hans Ram, who was unmarried were the owners of half share each in respect of various properties and the present dispute is with regard to the Will dated 18.5.1983 purported to have been made by Hans Ram. FAO No.104/2009 appellant herein filed a probate petition in respect of the said Will stating that his

father Jhandu Singh expired in the year 1986, wife of Jhandu Singh expired in the year 1997 and Hans Ram, who was living with the appellant died on 14.8.1993. It was alleged by him that on 28.12.98, that is almost after five years from the date of the death of Hans Ram, he opened a box belonging to his mother and found a Will purported to have been executed by Hans Ram on 18.5.83 by virtue of which the deceased testator had bequeathed his one half share in the property bearing not E-249, Village Munirka, New Delhi consisting of 22 shops known as Rama Market in favour of the appellant.

3. The respondent no.2 filed his written statement, contesting the claim of the appellant, which was adopted by the respondent no.3.

4. The main objection which was taken by the respondent nos.2 and 3 was that the Will was forged and fabricated. It was stated that the appellant has concealed a material fact that he had filed a suit for partition bearing Suit no.542/1993 in respect of the property in question in which a consent decree was passed on 12.3.96, therefore, the partition of the property having been effected, there was no question of the deceased testator having made a Will in favour of the appellant. It was also stated that the alleged story of recovery of the Will from the box of his mother was only a concocted story made by the appellant. On the pleadings of the parties, the following issues were framed:(i) Whether the present petition has not been framed and filed in accordance with law? OPD (ii) Whether the present proceedings are barred in view of the position that partition decree dated 12.3.1996 had already been passed by the Civil Court and whether the petitioner is estopped from filing the present petition? OPD (iii) Whether the deceased Sh. Hans Ram had executed a valid Will dated 18.5.1983 while in sound disposing mind and whether the said document is the last Will and testament of the deceased? OPP (iv) Relief.

5. The appellant in support of his case had filed affidavits of four persons. So far as PW-1 and PW2 were concerned, though their affidavits were filed but they were not made available for the purpose of cross examination, consequently, their evidence was not read, as their testimony was incomplete. The court was left only with the testimony of PW-4/appellant and PW-3/ Mangat Singh, one of the

attesting witness of the Will. The respondent no.2 examined himself as RW-1. The issue no.1 was stated to be not survived and the same was therefore dropped. So far as issue no.2 is concerned, the trial court came to a finding that the Will which was set up by the appellant was not a genuine Will of the deceased testator. The reason for forming this view by the trial court was multifold. These reasons were; concealment of fact that the appellant had earlier filed a suit for partition; the original Will was not produced, what was produced was only a carbon copy; the appellant claimed that the deceased testator was living with him since 1986 while as the Will is purported to have been executed in 1983. The attesting witness was not able to prove the due execution of the Will in terms of Section 63 of the Indian Succession Act, 1925. In addition to this, the trial court had also observed the peculiar behavior and conduct of the appellant during the course of trial when he came for the purpose of cross examination where he was avoiding answers which constrained the Court to pass adverse observations.

6. In totality of facts and circumstances, the trial court came to a finding that the Will was shrouded with suspicious circumstances and therefore, could not be relied upon.

7. I have heard the learned counsel for the parties and gone through the testimonies of the witnesses as well as the record.

8. The main contention of the learned counsel for the appellant is that the earlier suit for partition was with regard to the properties owned by the father of the appellant and the respondent no.2 and 3 and therefore, there was no question of the property of the deceased testator being involved in the said suit or this factum being mentioned by the appellant in the probate petition.

9. So far as the proof of the Will is concerned, it has been contended by the learned counsel that the appellant has produced Mangat Singh as the attesting witness. The affidavit of the other attesting witness was also filed, however, as the said attesting witness was threatened by the respondents, therefore, he could not appear for the purpose of cross examination. He has filed an application bearing CM no.4243/2009, under Order 41 Rule 25 & 27 r/w Sec. 151 CPC seeking permission to file additional documents and adduce additional evidence which will

corroborate the testimony of PW-3 regarding proof of the Will.

10. So far as the observation of the Court regarding demeanor of the appellant is concerned, it was contended by the learned counsel that it was totally unwarranted and there was no reason for the Court to pass such observations as the appellant was not avoiding answers to the questions.

11. The learned counsel for the respondents has drawn the attention of the Court to the evidence and stated that the attesting witness was not able to prove the Will in terms of Section 63 of the Indian Succession Act, 1925 where he has to specifically state that the deceased testator had signed the Will after having understood the contents in the presence of the attesting witness and each of the attesting witnesses have signed in the presence of the other. He also refuted the other submissions of the counsel for the appellant.

12. I have carefully considered the submissions made by the learned counsel for the parties and gone through the record.

13. I feel that the appellant has himself failed to prove that the deceased testator had made a Will in his favour. This is on account of the fact that the conduct of the appellant himself is shrouded with mystery and surrounded by suspicious circumstances. He is not truthful and fair in disclosing that he had earlier filed a suit for partition in respect of the properties which were jointly owned by his father along with his brother Hans Ram who was the deceased testator and in the said suit and a compromise decree was passed. This compromise decree not only pertains to the properties owned by their father Jhandu Singh but also involves the property of Hans Ram.

14. Seen in the light of this, the deceased testators Will is shrouded with mystery on account of the fact that the attesting witness in his cross examination has stated that he learnt about the Will having been made through the appellant himself. The exact words which have been mentioned by the attesting witness are as under: I was told by Ajit Singh about the Will when this case was filed by him.

15. The attesting witness had stated that he had signed the Will at two places while as his signatures appeared only at one place. The appellant has stated that he has filed the original Will while as carbon copy of the Will has been filed and no explanation has been given as to where the original Will has gone. The appellant has stated that the Will is purported to have been prepared in the year 1983 while as the deceased testator came to live with him in 1986 and the trial court has rightly observed that the very fact that the Uncle of the appellant came to live with him in 1986 creates a doubt as to why he would make a Will in favour of somebody with whom he is not living and not showing any special love and affection and bequeath his property in his favour. To top it all, Section 68 of the Evidence Act specifically lays down as to how the Will is to be proved. Will has to be proved by producing one of the attesting witness. Mangat Ram is the attesting witness who gathers information from the appellant himself. Mangat Ram does not state that he had seen the deceased testator signing the Will in his presence and he put his signatures in the presence of the deceased as well as the second attesting witness. Therefore, the essential requirement which has to be satisfied before a Will is deemed to have been proved, is not satisfied. The fact that the appellant might have obtained the signatures on some documents from the attesting witness is also reflected by the fact that PW-3 had stated that he had signed the Will at two places while as his signatures appeared only at one place.

16. All this clearly show that the Will of the deceased testator is shrouded with mystery and there is absolutely no reason given in the Will as to why the deceased testator had shown extra love and affection for one of his nephews while as he had tried to divest the other two Nephews who are equally related to him. I therefore, feel that the appellant has not been able to prove the Will in accordance with law and it is shrouded with suspicious circumstance which are unexplained.

17. So far as the application of the appellant for producing additional evidence is concerned, I feel that the application is totally misconceived for two reasons.

18. Firstly, it is not necessary that both the attesting witnesses be examined, Section 68 of the Evidence Act clearly lays down that if a document is attested by two attesting witnesses then production of one witness is more than sufficient to

prove the document. Admittedly, in the instant case, one attesting witness has been produced by the appellant. Apart from this, the appellant had filed a similar application before the trial court also for production of the second attesting witness, which prayer was disallowed.

19. The appellant had preferred a Civil Miscellaneous Main matter against the said order which was also dismissed; therefore, the appellants fate was completely sealed so far as the production of the second witness was concerned. In any case, the Court has not drawn any adverse inference on account of non production of the second attesting witness; therefore, the application of the appellant is totally misconceived.

20. Having regard to the aforesaid facts and circumstance, I feel that the appeal of the appellant is without any merit and accordingly, the same is dismissed. V.K. SHALI, J.

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