Ram Kumar Gupta Vs. State and Others

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Court : Delhi

Decided On : Mar-21-2013

Judge : Indermeet Kaur

Appellant : Ram Kumar Gupta

Respondent : State and Others

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % + Date of Judgment:21.03.2013 FAO (OS) Nos.181/2012 & 182/2012 RAM KUMAR GUPTA Through:- ...Appellant Mr. S.N. Gupta and Mr. S.S. Shukla, Advs. Versus STATE & OTHERS Through:- ... Respondents Mr. Prakash Gautam and Mr. Amit Panigrahi, Advs. for R-2 & R-3. CORAM: HON'BLE MR. JUSTICE SANJAY KISHAN KAUL HON'BLE MS. JUSTICE INDERMEET KAUR INDERMEET KAUR, J.

(Oral) 1 This is an unfortunate dispute between the male siblings of deceased Bhikhu Ram Gupta (hereinafter referred to as the deceased). The deceased was the owner of a double storeyed house built on plot No. 21/32, Shakti Nagar, Delhi (hereinafter referred to as the property). Admittedly this was his self-acquired property and it was within his domain to bequeath this property in accordance with his wish. 2 Mr. Bhikhu Ram Gupta died on 04.10.1998. He was survived by his three sons and four daughters. The dispute is inter-se the sons of the deceased. 3 Test Case No.44/1999 was filed by Krishan Dass Gupta (hereinafter referred to as respondent No. 3) seeking grant of letters of administration qua a will purported to

have been executed by the deceased on 06.03.1992. In terms of this will, all the three sons were to get 1/3rd share in the property; daughters had been debarred. 4 In the course of these proceedings, Test Case No. 51/2004 had been filed by the youngest son of the deceased, Ram Kumar Gupta (hereinafter referred to as the appellant) staking his claim to the entire property premised on the later will of the deceased dated 21.09.1998. 5 The dispute before this Court is within a narrow compass. Learned counsel for the appellant does not dispute the earlier will of the deceased 06.03.1992. Submission is that by virtue of the later will dated 21.09.1998, the deceased had revoked his first testament and second will being his last will is liable to be probated. 6 Record shows that both Test cases had been consolidated. Eight issues were framed; common evidence was led. Issue No. 5 which is relevant for the controversy before this Court reads as under:Whether the Will dated 06.03.1992 has been revoked/cancelled by the testator Shri Bhikhu Ram Gupta by his subsequent Will dated 21.09.1998? 7 In order to prove his case, the appellant had produced six witnesses; respondent, per contra, had produced six witnesses. On the basis of the oral and documentary evidence led before the learned Single Judge, the impugned order had noted that there were suspicious circumstances surrounding the will dispelling its genuineness; in fact 16 of the said suspicious circumstances had been enumerated; the Court was of the view that the first will dated 06.03.1992 was the only last testament of the deceased; accordingly letters of administration qua the aforenoted will had been granted in favour of respondent No.

3. 8 The appellant being aggrieved by this finding has filed the present appeal. 9 On behalf of the appellant, it has been pointed out that the learned Single Judge has mis-appreciated the evidence; the will dated 21.09.1998 was a duly registered will; it was thumb marked by the deceased; in this will a reference has been made to his earlier will, revoking it. This document has been attested by two attesting witnesses of whom one attesting witness namely Jagan Nath Aggarwal had come into the witness box and had on oath testified that the deceased had thumb marked the will in his presence as also in the presence of the second attesting witness Vijay Kumar. He had proved his signatures on the said document (Ex. RW-3/1); submission being that he had also identified the thumb mark of the testator; all requirements for proving a valid will stood satisfied; there was no

reason for the Court to have disbelieved this testament. Submission being that it was the appellant who was all along looking after his father who was staying on the ground floor with him and his family; it was therefore the desire of the deceased to bequeath his entire property in favour of the appellant and he had accordingly revoked his earlier will. The impugned order not appreciating the factual scenario in the correct perspective has committed an illegality; impugned order is liable to be set aside. 10 On behalf of the respondents, arguments have been refuted; submission being that in no manner does the impugned order suffer from any infirmity; it is pointed out that the suspicious circumstances enumerated by the learned Single Judge had depicted the factual position correctly; the duty of the Court to have a stricter scrutiny in these circumstances has been appreciated in the true light. 11 As noted supra, the will dated 06.03.1992 is not disputed. This Court only has to return a finding on the validity of the later will. 12 It would thus be useful to examine the aforenoted documents. 13 The will dated 06.03.1992 has been proved as Ex. PW-6/3. It is a registered document. It is typed and on the third page of the document, the signatures of the testator Bhikhu Ram Gupta have been appended in urdu along with his thumb mark. The signature of the deceased has in fact been appended on all the three pages of this document. This will had been drafted by Advocate Om Prakash and had been attested by two attesting witnesses namely Mr. I.L. Bansal and Mr.K.R. Sharma. It was registered on 17.03.1992 i.e. within less than 10 days from the date of the execution of the document. In terms of this will, the deceased had bequeathed 1/3rd share each in favour of all his three sons; Ex.PW-6/3 further recites that the deceased has discharged his moral and legal obligation towards his four daughters who have since been married; he is not bequeathing anything in their favour. 14 The second will dated 21.09.1998 has been proved as Ex.RW-3/1. This document was registered after the death of testator i.e. on 11.01.1999; there however being no dispute to the proposition that in terms of Section 40 of the Indian Registration Act, 1908, such a registration is permissible. The deceased has thumb marked this will. Thumb mark appears on all the four pages of the document; deceased had however not signed this document. Submission of the learned counsel for the appellant on this score being that admittedly six years had passed since the execution of the earlier will and in this period of time, the hands and fingers of the

deceased were shaky; he not being in a position to sign the will, had accordingly thumb marked it. The scribe of this later will was not known. It is a typed written document but even in the cross-examination of the appellant, he has not been able to disclose as to who had prepared this will. By virtue of this will, the entire suit property had been bequeathed in favour of the appellant. 15 A comparative study of the two documents shows that the first two paragraphs of both Ex.PW-6/3 and Ex.RW-3/1 are verbatim same. In para 2 of Ex. RW-3/1, the testator states that this is his first and last will; this is an incorrect statement as the execution of the earlier will is not in dispute. It goes on to describe the marital status of his four daughters who are well established in life. This document however does not whisper a word about his other two sons i.e. Mahavir Prasad, his elder son or respondent No.3 who is his second son. It merely recites that since his youngest son and his family members were looking after his needs, he being happy with him was accordingly bequeathing the suit property in his favour. Ex.RW-3/1 has also been attested by the two witnesses first of whom is Jagan Nath Aggarwal and second attesting witness is Vijay Kumar. Out of the two attesting witnesses only one of them has come into the witness box. On a specific query put to the learned counsel for the appellant as to why the second witness did not appear as a witness, learned counsel for the appellant points out that he had filed his affidavit by way of evidence but thereafter chose not to appear for his cross-examination. Be that as it may, the legal position does not mandate that both the attesting witnesses have to come into the witness box; credible testimony of one attesting witness is sufficient to prove a will. 16 Testimony of RW-6 the only attesting witness to this will has to be examined in this light. He was the son-in-law of the deceased. In his examination in chief, he had proved the will, stating on oath that the deceased had thumb marked Ex.RW-3/1 in his presence and in the presence of the second attesting witness. In his cross-examination, he has stated that he has signed the last page of Ex.RW-3/1 only once. He admitted that the certified copy of the will contains his two signatures at point X. A perusal of Ex.RW-3/1 further shows that it has two thumb impressions; RW-6 had identified the thumb impression of the testator at mark M but the witness was unaware of the second thumb impression appearing at point N on the last page of Ex. RW-3/1; his submission being to the effect that he does not know whose thumb impression it

is. He denied the suggestion that he was deposing at the instance of Ram Kumar. 17 The testimony of the appellant Ram Kumar Gupta (examined as RW-1) is also relevant. He had admitted that the relations of his father with his other two sons were normal; the father was living on the ground floor where the appellant was also living; he denied the suggestion that the father was living on the ground floor of the premises only because of his medical condition. Even as per his statement, the deceased was very weak before his death and in fact even two years prior to his death, the appellant was used to feed him orally; his hands and feet were shaking; he was not in a position to visit the Registrars office. 18 Respondent No. 3 (examined as PW-6) has on oath deposed that his father has lost his memory 3-4 months prior to his death; he was also wetting the bed. 19 The sister of the parties had also come into the witness box and was examined as PW-5. She had deposed that their father had lost his mental senses and was not able to recognize even the family members and was most often confined to bed; this was six months prior to his death. Admittedly PW-5 is an independent witness and a family member. 20 Testimony of the neighbours and friends of the deceased, living in the same neighbourhood, is also relevant in this context. PW-2 had deposed that the deceased has lost his memory about 3-4 months prior to his death and was not able to recognize even the family members. PW-3 also a neighbour and a close friend of the deceased had also deposed on the same lines; deposition being to the effect that six months prior to his death, his behavior had become abnormal; he was suffering from a memory loss. To the same effect is the version of PW-4 also a neighbour. He also deposed that the deceased has lost his mental senses 5-6 months prior to his death and was not able to recognize any person; he was physically very weak; he has lost his mental senses. 21 All the aforenoted witnesses are independent witnesses; they had no special interest in deposing for one party or the other; in fact it is also not the case of the appellant that the aforenoted witnesses were not presenting the true picture. 22 The picture as emerging from the testimony of these witnesses clearly establishes that the mental faculties of the deceased 5-6 months prior to the date of his death had deteriorated to a point where he was not able to recognize even his own family members; he was confined to bed; he was unable to attend even to the call of nature. 23 The deceased died on 04.10.1998 and the will sought to be set up by

the appellant is dated 21.09.1998 i.e. just two weeks before his death. These dates itself, keeping in view the mental and physical condition of the deceased, do create a serious doubt on the capacity of the testator to execute a valid will. 24 The legal proposition is well settled. The onus of proving a will is on the propounder; in the absence of suspicious circumstances surrounding the execution of will, proof of testamentary capacity and the signature of the testator may be sufficient to discharge the onus. Where, however, there are suspicious circumstances, the onus is on the propounder to dispel the said suspicious circumstances. The number and nature of the suspicious circumstances cannot be put in a strait jacket formula; however the genuineness of the signatures of the testator; the condition of his mind; depositions made in the will being unnatural, improbable or unfair in the light of relevant circumstances or other indications in the will to show that the testators mind was not free; in such circumstances; the Court would naturally expect that all legitimate suspicions should be removed before the document can be accepted as the last wish of the testator. 25 Premised on this test the oral and documentary evidence of the parties was appreciated by the learned Single Judge. Ex. RW-3/1 was admittedly executed 13 days prior to the death of the deceased. The mental and physical condition of the deceased was far from satisfactory; he had lost his memory; his mental faculties had become disabled to such an extent that he could no longer even recognize his family. The independent witnesses who had come into the witness box had also admitted that the mental condition of the deceased was abnormal; he had lost his memory; since the last 5-6 months prior to his death, he stopped recognizing even the family members; he was confined to bed. 26 Ex.RW-3/1 was a typed document. No one knew who had scribed it. On a specific query put to RW-3 on this score, he had no answer; who had got this will prepared, typed and brought before the testator was in no ones knowledge. It was also not signed by the testator when he admittedly otherwise use to sign in urdu. Each circumstance by itself may not be suspicious as a thumb marked will if validly proved may be probated. However, this was not so in the instant case. It is not the case of the parties that the testator could not sign; the only argument on the thumb marking of the document being that since the hands of the testator used to tremble, he did not sign it. This thumb marking is also shrouded in suspicion; RW-4 (the only attesting witness) was not

able to answer as to how there were two thumb marks on the last page on Ex.RW-3/1; he had admitted the thumb mark of the testator at point M but was totally unaware of the second thumb mark at point N. A perusal of the thumb mark in fact shows that this thumb impression is in the reverse direction. 27 Ex.RW-3/1 is also an interference in the natural line of succession; the other two sons of the testator were sought to be disinherited; there is no mention of their names in Ex. RW-3/1 although in terms of the first will, all the three sons were to get an equal share in the property. The later will disinherited them completely. This is especially relevant as it is the own case of the appellant that the relations of the testator were normal with all his children including his sons whom he now chose to dis-inherit by the proposed second will. An interference in the ordinary line of succession is not a normal course; such a circumstance casts a greater duty upon the Court to examine and scrutinize the will more closely. 28 It is also admitted that the parties had on 02.10.1991 entered into a family settlement which was signed by all the children of the deceased i.e. his three sons and four daughters and which was in conformity with the first will. 29 RW-4 a witness from the office of the Sub-Registrar had produced the original record (Ex.RW-3/1); page 4 of the office record contained additional two signatures of each witness with a thumb impression. The submission of the learned counsel for the appellant on this score that these additional signatures and thumb impression were only in the certified copy and were for the reason that at the time of registration of the will (which was admittedly after the death of the deceased), the aforenoted additional signatures had been required to be put on the document is not an argument available to the appellant as this clarification should have been sought from RW-4 who had come into the witness box and deposed to the said effect. None of this had been done. 30 Para 2 of Ex.RW-3/1 also refers to the document as the first will; this is an incorrect statement as in the body of the same document (Ex.RW-3/1), the testator had stated that he had cancelled his first will dated 06.03.1992. 31 The aforenoted circumstances create grave shadows of doubt upon the execution of Ex.RW-3/1. As a general rule, a single circumstance by itself may not be sufficient to dispel the validity of a will, if it has otherwise been proved in accordance with law. However, in the present case, even presuming that the testimony of the attesting witness is to be accepted, the surrounding circumstances qua the execution of the will are far

too many and which as noted by the learned Single Judge have not been dispelled by the appellant; the settled legal position that the onus of discharge being upon the person who propounds a document. Thus all these cumulative circumstances taken together sufficiently establish that the second will dated 21.09.1998 could not withstand the test of a fair scrutiny. It being shrouded with suspicious circumstances, the learned Single Judge had rightly returned a finding that it did not establish that the deceased had executed this document while he was of a sound disposing mind and which is admittedly an essential requirement. 32 The impugned order in this background does not suffer from any infirmity. Appeals being without any merit are dismissed. INDERMEET KAUR, J.

SANJAY KISHAN KAUL, J.

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