

L. Chamanlal (Dead) Through L. Rs.

Vs

Smt. Ram Katori and Another

Civil Appeal No. 617(N) 1967

(K. S. Hegde, P. Jagmohan Reddy, D. G. Palekar JJ)

31.01.1972

JUDGMENT

PALEKAR, J. -

1. This appeal by special leave is filed by the plaintiffs whose suit No. 140 of 1951 has been dismissed by the High Court at Allahabad in first Appeal No. 93 of 1954, reversing the decree of the learned Civil Judge, Saharanpur who had decreed the suit. The suit was for possession.
2. One Ramanand had two sons - Chamanlal and Ajodhya Prasad. Chamanlal's son is Kailash Chand. The suit was brought by Chamanlal and Kailash Chand. Chamanlal died during the litigation and his heirs have been brought on record. Ajodhya Prasad married one Sonia Devi. They had two issues - son Manakchand and daughter Makhmali. Ajodhya Prasad died in 1928 while he was still a member of the joint family. His son Manakchand died in 1930 when he was barely three years old. Makhmali was given in marriage to one Shanti Prasad, D.W. 3. Disputes arose between the widow Sonia Devi and the plaintiffs with regard to family property and they were referred to arbitration in 1931. The arbitrators gave an award which was later filed in court. Under this award-decree the suit property and a large amount of cash were awarded to Sonia Devi absolutely. She obtained possession of the property allotted to her.
3. Makhmali the daughter of Sonia Devi died in 1944 and Sonia Devi died on May 14, 1950.
4. Three years before her death i.e. on June 6, 1947, Sonia Devi who was about 70 years old, executed a Will Ext. A-1 leaving all her property to her brother's widowed daughter-in-law, Ram Katori and her daughter, Kiran Lata. They are Defendants 1 and 2 Ram Katori was given a life interest in the property and after her death Kiran Lata was to be the absolute owner. In the event of her death without any issue the property was to go to her husband. The plaintiffs challenged the Will Ext. A-I and claimed the property.
5. The trial court decreed the suit holding that the Will was not intelligently executed by Sonia Devi. In appeal the High Court held that the Will was genuine and intelligently executed by Sonia Devi and, therefore, the disposition in favour of the defendants was quite valid. Accordingly, the High Court reversed the trial court's decree and dismissed the suit.
6. The only point urged before us by Mr. Phadke on behalf of the plaintiffs was that the High Court was in error in holding that the Will Ext. A-I was intelligently executed. He contended that the witnesses, especially, Shanti Prasad, D.W. 3 who was examined to show that the Will was validly executed was not a reliable witness being very much interested in propounding the Will, secondly

that the very contents of the Will, which in his submission was a complicated sort of Will, would go to show that Sonia Devi who was an illiterate pardanashin lady could not have executed the Will by intelligently understanding the contents therefore. In our opinion, there is no substance in either of these contentions.

7. The Will Ext. A-I was in Urdu. It is simple Urdu which Sonia Devi whose mother-tongue was Hindi could intelligently follow. The Will is attested by as many as five witnesses including Lala Permeshti Dass, D.W. 1, Budh Ram. D.W. 2 and Sonia's son-in-law Shanti Prasad, D.W. 3. The evidence of all these witnesses with regard to the execution of the Will has been accepted by the High Court. According to their evidence the Will was written from a draft, in the presence of Sonia Devi and the attesting witnesses. After the fair Will was prepared it was read over to Sonia Devi. Sonia Devi thereafter suggested a few changes which were accordingly made in the Will and after she had agreed to the contents of the Will, she put her thumb-impression on the Will in their presence. So far as the proper execution of the Will itself is concerned, there is no dispute. But the contention is that Sonia Devi could not have intelligently executed the Will. We do not see how it could be said that it was not intelligently executed. Both the courts have held that the relations between Sonia Devi and the respondents were so bitter that she was anxious that her property which she had got under award should not go to them. At the time when she made the Will, she had no issue. Both her son and daughter had died. Her daughter had died in 1944 but she had regard for her son-in-law Shanti Prasad, D.W. 3 and this regard has been clearly reflected in the Will. But has made no disposition in favour Shanti Prasad also. All her property had been given to her brother's daughter-in-law defendant No. 1 and her daughter Kiran Lata, defendant No. 2. Kiran Lata was unmarried but she had been betrothed to one Naresh Chandra at the time and it appears that sometime later Kiran Lata married Naresh Chandra. The testator records in the Will that Ram Katori and Kiran Lata had been living with her for a long time and that she had brought up Kiran Lata from her childhood like her own daughter. That accounts for the disposition in their favour. She has also recorded the fact that Kiran Lata's betrothal with Naresh Chandra was performed by her. Taking it for granted that they will marry soon, she has suggested that either Shanti Prasad or Naresh Chandra shall realize the rents of her shop in Bazar Har Saran Das and give the same to Ram Katori during her life-time. She has also suggested that if Naresh Chandra should enter the business of shop-keeping the shop should be given to him, though the absolute ownership of the same was to remain with Kiran Lata. She further authorized Kiran Lata, Naresh Chandra and Shanti Prasad to evict the tenants in possession of the shop, if necessary. While she gave her property to Ram Katori and Kiran Lata she requested Shanti Prasad and Naresh Chandra to help in the management because, after all, the dispositions were in favour of two ladies and Shanti Prasad and Naresh Chandra could be relied upon to help in the management and the collection of rents. There is nothing complicated in the Will.

8. The argument was advanced that the Will must have been the handiwork of Shanti Prasad and that it was he who really made the Will and simply asked the old lady to give her thumb-impression on the same without understanding what it was all about. We find no basis in evidence for this argument. Shanti Prasad was her son-in-law and it is quite likely that she had confidence in him. If Shanti Prasad had an eye on the property of his mother-in-law and had obtained a Will by subterfuge then the dispositions of the property would have been quite different. We do not find any bequest in favour of Shanti Prasad or any of his relations. The fact that she had suggested to Shanti Prasad in the Will that he may help the ladies in the management can only speak of her confidence in him. He has not been given any beneficial interest in the property and the obligations he undertook under the Will were more in the nature of the obligations of an executor. The very fact that a son-in-law of the testator's confidence who gets nothing under the Will was present at the time

of the execution of the Will would, far from creating suspicion, establish that it was a genuism document.

9. It is true that Sonia Devi was illiterate but that does not mean that she was unintelligent. She had raised disputes with her brother-in-law with regard to her share in the family properties and had been able to get her share not as a mere life estate but absolutely. As the Will shows, she has been able to preserve that property without much detriment. She had also filed a suit against one Jai Ram Singh and others and obtained a decree against them. A fairly large amount had been kept by her in deposit with the firm Ajodhya Prasad Bhagat Prasad. The dispositions made in the Will also go to show how fair and intelligent she is. There is, therefore, no reason to suspect that she was merely a tool in the hands of somebody. It may be that she had sought sometimes the advice of Shanti Prasad. But if a widow like her takes her son-in-law into confidence that would be no ground at all for suspecting anything. If Shanti Prasad had obtained beneficial interest in the property under the Will that may afford some basis for suspicion. But since he does not acquire any interest in her property the mere fact that he has been charged with the management of the property to a limited extent for the benefit to Ram Katori and Kiran Lata would be no ground to suspect the genuineness of the Will. There is again intrinsic evidence in the Will itself to show that the testator had intelligently followed the Will when it was read over to her. In Para 3 of the Will the testator had directed that the money in deposit with Ajodhya Prasad and the amount of the decree against Jai Ram Singh should be utilized in the first instance for the marriage of Kiran Lata, and, if any balance was left thereafter, the same should be deposited in the name of Kiran Lata and the interest thereof should be paid to Ram Katori. After the fair copy was prepared and read over to her, it seems, she changed her mind a bit with regard to the disposition of the amount. Instead of the balance being deposited in the name of Kiran Lata, she directed that the same may be spent over the construction and repair of the houses which were dilapidated at the time. This change is incorporated in the first note above her signature. Nothing can be more conclusive than this piece of evidence to show that when the Will was read over to her she intelligently understood its contents and, thereafter directed some change at the last moment. We, therefore, agree with the High Court that there is really no evidence of any sort of subterfuge at the time of the execution of the Will or that she had made it unintelligently. It must be further noted that this Will was also registered the same day and Sonia Devi lived thereafter for about three years.

10. In the result we agree with the High Court that the Will Ext. A-I was the genuine Will of Sonia Devi and since the property thereunder has passed to the defendants, the plaintiff's suit was rightly dismissed. The appeal is dismissed with costs.

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