

Brij Mohan Lal Arora and Others

Vs

Girdhari Lal Manocha

Civil Appeals Nos. 2411-2412 of 1968

(R. S. Sarkaria, N. L. Untawalia, P. S. Kailasam JJ)

10.02.1978

JUDGMENT

SARKARIA, J. -

1. These appeals by special leave are directed against a judgment of the High Court of Allahabad. The dispute here centers round a Will dated September 18, 1969 executed by a widow, Smt. Chandi Rani, whereby she bequeathed all her movable and immovable property in favour of Girdhari Lal Manocha, respondent herein. The legatee-propounder is the grandson of the brother of the testatrix, while the appellants herein, who contest the factum and validity of the Will, are the sons of her husband's brother.

2. Reversing the finding of the Civil Judge, Faizabad the High Court has held that the Will was duly executed by Smt. Chandi Rani and is valid.

3. Mr. Iyengar, appearing for the appellants, contends that there were a number of suspicious circumstances surrounding this Will, which had not been satisfactorily explained by its propounder. Such circumstances enunciated by the Counsel are :

(1) At the time of making the Will, the testatrix was virtually living in confinement under the control of the respondent. She was not free to meet the appellants, nor had she access to any independent advice.

(2) Smt. Chandi Rani must be in failing senses or coma at the time of the alleged execution of the Will because -

(a) she died the same day, a few hours of the alleged Will; and

(b) the Will bears her thumb-mark, though she was proficient enough to write letters in Hindi and sign her name.

(3) The Will was not got registered on the very day of its execution, but on November 10, 1960, about three weeks after the death of the testatrix.

(4) The Will is couched in general terms and is bereft of any recital as to the particulars of the property held by the testatrix.

(5) There is no indication anywhere in the Will or in the evidence of the witnesses as to the precise time of its execution.

4. In connection with circumstance (1) counsel has taken us through some letters and other documents on record which are said to have been written or executed by Smt. Chandi Rani, deceased. Particular stress was placed on the letter, Ex.10, dated June 14, 1958, written by her to Brij Mohan Lal, appellant. In this letter, she says : "Not a single day passes, when I do not shed tears for 2-4 times. I have come here under great compulsion." She then urges Brij Mohan Lal to meet her at Allahabad, where she would go to attend the death anniversary of a near relation. She further warns the addressee : "People use to read letters here. Do not write anything secret." It is argued that this letter, apart from indicating that she was on very good terms with the appellant whom she regarded as a son, shows that she was very unhappy to live with the respondents as they were keeping her under a sort of surveillance and were making it difficult for her to act or write as she wished.

5. We do not think that it can be reasonably spelled out of the letter, Ex. 10, that she was virtually a prisoner in the hands of the Respondents and his brother. She was feeling distressed, because, firstly she was chronically ill and almost an invalid, and secondly, the death of a near relation had accentuated her anguish. Rather, her grievance was that the appellants had neglected her, but Murari and Girdhari had taken her to their place for treatment. The letter, Ex.10, read as a whole, amounts but to a pathetic entreaty to the appellant, Brij Lal, not to maintain an indifferent attitude towards her, but to meet and help share her woes and worries. Throughout the chain of letters (exhibited in evidence) which Smt. Chandi Rani wrote to Brij Mohan Lal from 1953 to 1959, runs a pathetic note of regret that Brij Mohan Lal was not reciprocating the feelings of natural affection and tenderness which she as his aunt, had for him. She was repeatedly imploring Brij Mohan Lal to meet her and listen to her woes and fears. But Brij Mohan Lal appears to have paid scant heed to her distress calls. He rarely replied her letters. There is nothing to show that in response to her appeal in the letter, Ex.10, dated June 8, 1958, Brij Mohan Lal had met her at any time before her death on September 18, 1960.

6. In contrast with the neglect shown by the appellants, Girdhari Lal respondent has been taking care of her for 7 or 8 years preceding her death. No wonder, therefore, that out of sheer frustration (of which she speaks in her letter, Ex.14), she turned her affections on Girdhari Lal to the exclusion of the indifferent appellants.

7. Evidence on the record shows that she had come to repose full confidence in Girdhari Lal. He was looking after her accounts and Bank affairs. As early as 1957, she opened a joint Fixed Deposit Account in Punjab National Bank (vide Ex. A-6) in the name of Girdhari Lal and herself, payable to either or survivor. She enlarged this account by crediting more money in it, in 1958 (vide Ex. A-7), so that at the time of her death, there was Rs. 10,000 in this Fixed Deposit Account, payable to her or the survivor (who was Girdhari Lal, respondent). In the context of the Bank Deposits of the deceased, it is evident from Ex. A-4, which is a document, dated August 25, 1959 produced by the Appellants themselves, that all her money then lying deposited in Banks, had been given to her father and not by her husband. This being the case, she was naturally disposed to bequeath or give this money to her relations from her father's side in preference to the heirs of her husband. Further assurance of her inclination to prefer Girdhari Lal for the bequest, is furnished by the circumstance (vide Ex. A-8) that she had hired a Locker of Punjab National Bank, jointly with Girdhari Lal, in which she had kept currency notes, worth Rs. 1200, and silver rupee-coins, worth Rs. 300, on October 8, 1956.

8. As regards circumstance (2), it may be borne in mind that Smt. Chandi Rani was an old lady of 70 years or so. As early as February 21, 1956, in her letter, Ex.14 she stated that her hand was

trembling and she felt great difficulty in writing. The High Court has noted that from her admitted signature on Ex. A-4, dated August 25, 1959 it is obvious that she had gone very weak and her hand trembled a good deal. Thirteen months thereafter, the tremor in her hand must have worsened and caused further physical deterioration in her ability to execute a writing. This disability might have been further accentuated as result of the loose motions she was passing since September 17, 1968.

9. There is, however, evidence on the record, that despite her incapacity to write or sign, she was at the time of executing the Will on September 18, 1960 in sound mental condition, and capable of understanding what she was doing. This evidence is furnished by the statements of Girdhari Lal (Respondent), DW 3, Basdeo Singh, DW 1, an attesting witness of the Will, Ex.1, and Dr. Yog Dutt Kapoor, the family physician of the testatrix, who last attended on her on September 18, 1960. We have gone through their evidence with the assistance of Mr. Iyengar. In agreement with the High Court, we find their evidence trustworthy. Dr. Kapoor testified that when he examined Chandi Rani at about 11.00 a.m. or noon on September 18, her mental condition was all right, though her condition of heart was weak. At about 3-30 p.m. on the same day, Dr. Kapoor again examined her and found that her condition was bad and serious.

10. These witnesses do not speak about the precise time of the execution of the Will, because no pointed question in regard thereto was put to them, even in cross-examination. But the attesting witness, DW 1 does say that when he went to her in the morning, she told the witness that she was all right and wanted to execute a Will in favour of Girdhari Lal. DW 1 further testified that Chandi Rani affixed her thumb-impression - but did not put her signature - because her hand was shaking and she could not sign.

11. Thus, it was very clearly established that at the time of executing the Will, Ex.1, in the morning of September 18, 1960, the testatrix was of sound disposing mind, but was physically incapable of signing her name. These twin facts, which stood firmly established, had completely dispelled circumstance (2). Circumstance (5), though insignificant, also stood greatly obliterated by the evidence of the attesting witness who in general way put the time of the execution of the Will in the morning of September 18. Circumstances 3 and 4 have been stated only to be rejected.

12. For the foregoing reasons, the appeals fail and are dismissed with costs.

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