

Satya Pal Gopal Das

Vs

Smt. Panchu Bala Dasi and Others

Civil Appeal No. 852 of 1971

(O. Chinnappa Reddy, V. Khalid JJ)

18.01.1985

JUDGMENT

CHINNAPPA REDDY, J. -

1. Nrisingha Prosad Das was a well to do person, a zamindar and a business man, of Katwa. His only son, Surya Narayana Das died on April 1, 1935 leaving behind a childless widow Panchu Bala Dasi. A few days later, he lost his only other issue, a daughter. Shortly after the death of his two children, he came into touch with Binapani, wife of Satya Gopal Das, who became his mistress. A son Ramendra Narayan Das was born to Binapani on February 1, 1936. There is a question whether Ramendra Narayan is the illegitimate son of Nrisingha Prosad Das or the son of Satya Gopal Das. But the undoubted fact remains that almost right from his birth, Ramendra Narayan Das was brought up as a child of the family of Nrisingha Prosad Das and it was round this child that the entire life of the family of Nrisingha Prosad Das and it was round this child that the entire life of the family revolved. Not only Nrisingha Prosad Das, but also his wife Kali Dasi and daughter-in-law Panchu Bala Dasi lavished their love and affection on him, though there was some suggestion and argument in the lower court that the love and affection showered on Ramendra Narayan Das was superficial. It is no longer disputed before us that Ramendra Narayan Das was greatly and genuinely loved by all the members of the family, that is, Nrisingha Prosad Das, his wife, Kali Dasi and his daughter-in-law, Panchu Bala Dasi. That he was so dearly loved and treated with great affection is clear from the series of letters written by Nrisingha Prosad Das, Kali Dasi and Panchu Bala Dasi Exhibits 2(a) to 2(z) and 2(z) series. Nrisingha Prosad Das died on March 12, 1950. His widow Kali Dasi died on January 8, 1951. On February 1, 1954, Satya Gopal Das propounded a Will said to have been executed by Nrisingha Prosad Das on June 21, 1946 and registered on June 30, 1946. By this Will the testator purported to give all his properties including those which he claimed to have purchased benami in the names of his wife and daughter-in-law to Ramendra Narayan Das. It was mentioned in the Will that he had given sufficient amounts of cash to his wife and daughter-in-law for their comfortable maintenance and pilgrimages. The Will contained a lengthy schedule of properties and it is sufficient at this juncture to say that every page of the Will contains the signature of Nrisingha Prosad Das. The Will was written by Bharat Chandra Das (OPW 4) and bears the attestation of Kali Dasi (deceased widow), Panchu Bala Dasi (OPW 13), Pashupati Mondal (PW 1), Kaplipada Das (PW 5) and Satyendra Nath Mullick (OPW 9). We may mention here that Pashupati Mondal and Kalipada Das were the trusted employees of Nrisingha Prosad Das, as apparent from the letters Exhibits 2(a) to 2(z) and 2(z) series. Satyendra Nath Mullick was the private tutor employed by Nrisingha Prosad Das for the boy Ramendra Narayan Das. Satya Gopal Das sought probate of the Will and filed Will Case No. 1/62/7 of 1957/1954 in the court of the Additional District Judge, Burdwan. The suit was contested by Panchu Bala Dasi. Various pleas were raised and voluminous evidence was let in. After a consideration of the entire evidence, probate was granted

with a copy of the Will annexed. Panchu Bala Dasi preferred an appeal to the High Court of Calcutta. The appeal was allowed by Purushottam Chatterjee and A. C. Sen, JJ. by two separate judgments. The grant of probate was set aside. Satya Gopal Das obtained a certificate under Article 133(1)(a) of the Constitution to prefer an appeal to this Court and the appeal is now before us.

2. We are far from satisfied that the High Court was justified in reversing the judgment of the trial court. Such suspicious circumstances, as the High Court was able to point out, were more than dispelled by certain outstanding features of the case which we shall presently enumerate. The most suspicious circumstance, according to the High Court, was that the two signatures, purporting to be those of Kali Dasi and Panchu Bala Dasi in the Will, were not or did not appear to be those of Kali Dasi and Panchu Bala Dasi. The other important circumstance, according to the High Court, was that the Will did not make any provision for Kali Dasi and Panchu Bala Dasi. Not only did it not make any provision, even the properties purchased in their names were included in the Will as the properties of Nrisingha Prosad Das and bequeathed to Ramendra Narayan Das.

3. As we said there are certain outstanding features of the case which should dispel all suspicion that may possibly otherwise attach itself to the Will. The Will was registered on June 30, 1946 and the testator died on March 12, 1950. That is to say, the testator lived for nearly four years after the execution and registration of the Will and yet he took no steps to have the Will cancelled or to revoke it. It could not be that the Will was somehow brought into existence and the signatures of Nrisingha Prosad Das were obtained in the Will by practicing some fraud. The endorsements on the Will show that Nrisingha Prosad Das himself had presented the Will for registration to the Sub-Registrar and that the Sub-Registrar had been called to the residence of Nrisingha Prosad Das for the purpose of registering the Will. Nrisingha Prosad Das affixed his signature twice again in the presence of the Sub-Registrar, as shown by the endorsements. The endorsements also show that execution was admitted by Nrisingha Prosad Das. As earlier mentioned by us, every page of the Will has been signed by Nrisingha Prosad Das and at the Foot of the Will, a note listing the various corrections made has also been signed by Nrisingha Prosad Das. Therefore, there cannot even be the slightest doubt that the document was executed by Nrisingha Prosad Das, that its execution was admitted by Nrisingha Prosad Das before the Sub-Registrar and that Nrisingha Prosad Das himself presented it to the Sub Registrar having called him to his own residence for that purpose. It is in the background of these outstanding circumstances that we have to consider the further questions whether the signatures purporting to be those of the attesting witnesses are in fact theirs and whether these signatures were made in the presence of the testator ? Also whether the testator signed the Will in the presence of the attestors ? In considering these questions, it is necessary to bear in mind the following recital in the Will :

To this effect, I duly execute this Will in a composed state of mind out of my own accord, in good faith and in the presence of witnesses.

It is also necessary to bear in mind that there was no necessity whatsoever for the testator to make any such false recital. He was an important person and leading citizen of Katwa. He could have got anyone to attest the Will if he was so minded. The Will itself was not executed in a clandestine or surreptitious manner. As already pointed out by us, the Will was registered at the residence of the testator after obtaining the presence of the Sub-Registrar at the residence. The visit of the Sub-Registrar to the residence must have itself made it known to everybody in a small town like Katwa that some document was being executed and registered at the residence of Nrisingha Prosad Das. We have also referred to the circumstance that the testator himself lived for nearly four years after the execution and registration of the Will and during his lifetime, no one raised the slightest question

about the genuineness of any signature found in the Will. As regards the attesting witnesses themselves, obviously the best and the most interested persons were called to attest the Will. The first attesting witness was the attestator's wife. The second attesting witness was the widowed daughter-in-law of the testator. The third and the fourth attesting witnesses were the most trusted employees of the testator while the fifth attesting witness was the private tutor of the boy, Ramendra Narayan Das, the only beneficiary under the Will. Pashupati Mondal and Kalipada Das have both supported the propounder of the Will and they have both stated that Nrisingha Prosad Das signed the Will in the presence of the attesting witnesses and the attestors thereafter attested the Will in the presence of Brisingha Prosad Das. We find no reason whatsoever to reject the testimony of these two witnesses, particularly in the background of the circumstance that the Will was undoubtedly signed by Nrisingha Prosad Das, who admitted its execution before the Sub-Registrar. The private tutor, Satyendra Nath Mullick (OPW 9) while admitting his signature in the Will stated that he affixed his signature at his house and that when he put his signature, Nrisingha Prosad Das had not signed the Will. Pashupati Mondal and Kalipada Das however signed in his presence and thereafter he affixed his signature. At that time the signatures of Kali Dasi and Panchu Bala Dasi were not there. We find it difficult to accept the evidence of this witness. In the course of cross-examination, he stated that he signed the Will because the other two signed in his presence, otherwise he would not have signed. He also stated that he raised the question why he should sign without seeing the testator signing the document. Having realised that he should not sign the document without seeing Nrisingha Prosad Das's signature in his presence, he has not chosen to explain why he ultimately agreed to sign the document. He went to the extent of stating that thereafter twice he attempted to see Nrisingha Prosad Das to tell him that he had signed the Will, but that he could not meet him as he was told that he was ill. This is a blatant falsehood. Nrisingha Prosad Das lived for nearly four years after the execution of the Will. If he really wanted to inform him that he had attested the Will, he could have done so at any time. The caveator also examined the scribe of the Will, Bharat Chander Das on her side. He chose to say that he wrote the Will at his own house with reference to a draft and some slips of paper which were given to him by Gagan Bhui, Pashupati Mondal and Satya Gopal Das. According to him, it took five or six days for him to write the document. After completing the document, he put his signature and date on it and thereafter, it was taken away from him by Gagan Bhui. He never had any talk with Nrisingha Prosad Das about the Will. In cross-examination, he admitted that he knew Nrisingha Prosad Das very well and that he had written many documents for him. If that was so, there was no reason whatever for him not to inform Nrisingha Prosad Das about his writing the Will. It is surprising that he should have written a Will without obtaining the instructions of the testator. It is even more surprising that he did not even care to inform Nrisingha Prosad Das about the Will, although he knew him very well. He stated that after writing the Will, he never saw Nrisingha Prosad Das again. This is a totally absurd statement. Nrisingha Prosad Das was alive for nearly four years and it is impossible to believe that Bharat Chander Das never saw Nrisingha Prosad Das again after writing the Will. We do not have the slightest hesitation in rejecting his evidence as utterly false. We now come to consider the signatures of Kali Dasi and Panchu Bala Dasi. Panchu Bala Dasi went to the extent of stating that she heard about the Will for the first time after the institution of the case. As already mentioned by us, the Will was registered in the house of her father-in-law where she was also living and it is too much to believe that she was not aware of the execution of the Will. She went further and said that Nrisingha Prosad Das never kept the boy Ramendra Narayan Das in their house even for a single day. This is a blatant falsehood and is contrary to the several letters written by her which form part of the series Exhibits 2(a) to 2(z) and 2(z) series. She also stated in her evidence that she had no special affection for Ramendra Narayan Das and that to her, Ramendra Narayan Das was no more than a child of any other neighbour. This statement is again belied by her own letters. The letters undoubtedly show that

Ramendra Narayan Das was the focal point around which all life in the family revolved and that not only Nrisingha Prosad Das, but also Kali Dasi and Panchu Bala Dasi lavished their affection on him. For reasons of her own which are not far to seek Panchu Bala Dasi has now chosen to deny that Ramendra Narayan Das was ever in their house or that any member of their household had any affection for him. That Ramendra Narayan Das and his mother, Binapani were treated as intimate members of the family is now clear from the admission of Panchu Bala Dasi that for five or six years before the death of Nrisingha Prosad Das, it was Binapani that was the karta of the family and that it was she who was managing the estate of Nrisingha Prosad Das during his last days. It appears from the evidence that before the death of Nrisingha Prosad Das and for several years thereafter, there were no differences whatsoever between the members of the family and Binapani or Ramendra Narayan Das. That was apparently the reason why Nrisingha Prosad Das did not make any separate provision either for Kali Dasi or Panchu Bala Dasi in the Will. Everyone of the ladies of the family was treating Ramendra Narayan Das as her own child and it was obviously expected that Ramendra Narayan Das would treat them in the same fashion. Viewed in the background of all the circumstances, it will be clear that there was no reason or occasion for anyone to bring into existence forged signatures of either Kali Dasi or Panchu Bala Dasi. Even without them there were sufficient number of other attesting witnesses. It was suggested that their names were added as attesting witnesses in order to tie them down to the recital in the Will that the properties purchased in their names were the properties of Nrisingha Prosad Das. There was no reason for Nrisingha Prosad Das to do so. The properties were obviously purchased benami in their names and apparently in order to avoid future complications he mentioned the properties as his own. There would be some substance in the submission made on behalf of the respondents if Nrisingha Prosad Das was unaware of the contents of the document which he had executed. There is nothing to indicate that he was not aware of the contents of the Will. He had signed every page of the Will and admitted its execution before the Sub-Registrar. Some comment was made that the Sub-Registrar had not been examined as a witness though he was named as a witness by the propounder. It was wholly unnecessary to call the Sub-Registrar as a witness and we find from the cross-examination of the propounder that he was not asked why he did not examine the Sub-Registrar. We do not think that anything material turns on the non-examination of the Sub-Registrar in view of the endorsements found in the Will. We are satisfied that the signatures purporting to be those of Kali Dasi and Panchu Bala Dasi are indeed those of Kali Dasi and Panchu Bala Dasi and none else. The handwriting expert no doubt gave evidence to the contrary, but as rightly observed by the trial court, comparison of handwriting is yet not a definite science and as admitted by the expert himself, there are pictorial similarities between the specimen signatures and disputed signatures and "if one who has just learnt to put signatures does not sign for some time and wants to put signature after lapse of time, say four or five years, the writer may show certain changes". Panchu Bala Dasi admitted that her mother-in-law hardly knew how to write. We must mention here that the letters Exhibits 2(a) to 2(z) and 2(z) series were admitted in evidence by consent of parties, but for some curious reasons, the High Court would not look into them except cursorily. We have perused them in detail and the learned counsel on either side did not raise any objection to our perusal of the documents. To end with what we stated at the beginning, there cannot be the slightest doubt that the Will was executed by Nrisingha Prosad Das and was registered on his presenting it to the Sub-Registrar for registration. Thereafter, Nrisingha Prosad Das lived for nearly four years and took no steps to have the Will cancelled or revoked. These circumstances should dispel any suspicion that may otherwise attach itself to the Will. We do not think that it is necessary to go into any further details of the evidence. In the result the appeal is allowed. The judgment of the High Court is set aside and the judgment of the trial court is restored. We however record an undertaking given by Shri D. N. Mukherjee, learned counsel for the appellant that the respondent Panchu Bala Dasi will not be

disturbed from residing in the house in which she is now resident. She will have no other right. There is no order regarding costs.

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