

H. H. Maharaja Bhanu Prakash Singh

Vs

Tika Yogendra Chandra

Civil Appeal No. 1155 of 1975

(M. P. Thakkar, K. N. Singh, N. D. Ojha JJ)

21.01.1988

ORDER

1. Validity of a will having been concurrently upheld by the trial court the High Court, the caveator has preferred the present appeal by special leave.

2. A glance at the family tree showing the relationship between the parties will prove useful :

# Rajmata Shivkumar (Widow of Ruler of Narsingharh) (Testatrix)(Will executed on February 15, 1958) | (died on June 11, 1964) ----- || |Rani Hemant Kunwar  
Other three Vikram Singhof Juggal (died before daughters (died before datedate of will) of will) |  
|Rana Digvijay Chandra Adopted sonof Juggal (Propounder Raja Bhanu Prakash& Principal  
legatee) Singh (Caveator)##

3. A few relevant facts pertaining to the questioned will may be brought into focus :

(1) The will was executed by the testatrix Rajmata Shiv Kunwar on February 15, 1958.

(2) It was drafted by Shri Purshottam, a clerk of Shri C. P. Jaiswal, a senior advocate of Hoshangabad.

(3) It was attested by two practising advocates of Hoshangabad viz, (1) Shri T. P. Rawat, a former Judge who was practising at the Bar after his retirement, and (2) Shri C. K. Adalia.

(4) The estate of the testatrix in respect of which the will was executed was valued at Rs. 1,20,000 in 1964. It comprised of jewellery valued at Rs. 75,000, a sum of Rs. 23,250 in bank deposits, three house properties, one orchard, and a parcel of agricultural land, shares, two motor cars, scooters etc.

(5) Principal legatee and sole executor under the will was her grandson Rana Digvijay Chandra of Juggal.

(6) Under the will a house property at Panchmarhi known as "Dak Bungalow" valued in 1964 at approximately Rs. 4000 was bequeathed to her counsel Rai Bahadur G. P. Jaiswal and his son Ram Prasad. Small bequests were also made in favour of her four female servants, and one of her cars was bequeathed to her driver.

(7) The will was in the custody of her advocate Shri G. P. Jaiswal.

(8) It was in terms mentioned in the will that Shri Bhanu Prakash Singh who claimed to be the adopted son of her predeceased son Vikramsinghji was in fact not his adopted son and he should not get anything under the will.

4. The will was propounded in the court by the sole executor and principal legatee Rana Digvijay Chandra of Juggal who instituted the petition for probate in the Court of Additional District Judge, Hoshangabad on December 21, 1964 some six months after the demise of the testatrix who died on June 11, 1964. He died during the pendency of the proceedings in the trial court and is represented by his legal representatives. The will was not contested by any of her three daughters. It was challenged only by appellant Raja Bhanu Prakash Singh who alone filed a caveat. His plea was that the testatrix had not executed any will. There was no specific denial of the genuineness of the signature of the testatrix or of the signatures of the attesting witnesses. Nor was any plea of undue influence raised in the caveat. The propounder placed reliance mainly on the evidence of the draftsman, the evidence of one of the attesting witnesses (Shri T. P. Rawat) and the evidence of advocate Shri Jaiswal. The appellant (caveator) did not enter the witness box to testify in the trial court. The evidence of witnesses examined by him was of little significance. The learned trial Judge on an appreciation of the evidence adduced before him concluded that the will was duly executed, duly attested, and has been duly proved. The learned trial Judge accordingly granted probate of the will. The High Court has concurred with the view of the trial court and confirmed the finding. The unsuccessful caveator has therefore approached this Court by way of the present appeal by special leave.

5. In our opinion the bequest was natural one. the principal legatee was the nearest male descendent of the testatrix, being the son of her deceased daughter. None of her other three daughters have contested or questioned the will. It was quite natural for her to prefer the grandson to the rest of her relatives. The caveator was the 'adopted' son of her predeceased son and evidently she had no affection for him. Apart from the fact that he was not a blood relation, she has stated in the will that she did not accept the very factum of adoption. None of her blood relations (three daughters) have complained that they have been excluded. None of them has questioned the fact that their mother had executed the will. None of them has come forward to deny her signature, mental capacity, or the mode of disposition. None of her nearest blood relatives have assailed the will on the ground of unnaturalness of the bequest or complained of exclusion. This is a circumstance of very great significance. There was nothing unnatural in the testatrix making her grandson, her nearest male descendent, the principal legatee. This conclusion is reinforced by the circumstance that none of her blood relatives including her daughters has raised even a murmur of complaint. Be it realized, that the appellant has not stepped into the witness box to depose that this relationship with the testatrix was not strained as revealed by the statement made in the will (she asserted that he had not been adopted by her predeceased son and in terms asserted that he should not get anything under the will). In view of such serious estrangement between the testatrix and the appellant it was quite natural rather than unnatural that the appellant was excluded. The will therefore throbs with naturalness. What then is the suspicious circumstance which calls for being dispelled? No clouds of suspicion have gathered around the will and none require to be dispelled. Learned counsel for the appellant has however harped on the circumstance that a bequest has been made in favour of her advocate whose clerk has drafted the will and whose professional brethren have attested the will. This submission does not impress us. There is nothing unnatural in the testatrix (the widow of the Ruler) making token bequests in favour of those who had served her with loyalty and devotion. It was but natural for the testatrix who made bequests even in favour of her maid servants and her

motor driver (whom she bequeathed one of her two cars) to have made a bequest in favour of her advocate. It needs to be emphasised that he is not the principal legatee but only one of the legatees who gets a token bequest (the principal legatee who gets a lion's share in the estate is her grandson). There is therefore nothing unnatural in making this bequest insofar as the facts and circumstances of the case are concerned. Besides she was not an illiterate or ignorant person. She was a poetess who had authored books of Hindi poems. It is reasonable to hold that she knew what she was doing and was not being duped by her legal advisor. The signals of caution which otherwise might justify a suspicion-informed approach when the lawyer of a testator himself is a legatee fail to flash.

6. Learned counsel for the appellant also urged that the likelihood of the legal advisor having wielded an undue influence deserved to be seriously taken into account. Again, in the facts and circumstances of the present case the submission does not carry conviction. At the cost of repetition it may be emphasized that :

- (1) the testatrix was an educated person who was not prone to succumb to undue influence;
- (2) to principal legatee was her grandson; and
- (3) there was nothing unnatural which would arouse suspicion.

In this background in the absence of any evidence or significant circumstance it is impossible to accede to this submission merely on the basis of the unwarranted conjectures and surmises which may becloud the vision of the caveator but which cannot becloud the vision of court. A last ditch attempt was also made to question the credibility of the attesting witnesses and the draftsman based on minor discrepancies and unsubstantial circumstances. We are satisfied that the evidence of these witnesses is reliable and satisfactory as concurrently held by the trial court and the High Court. The attesting witness, a former Judge, had no reason to commit perjury so that a member of the Bar gained a token bequest. And the learned advocate who benefited was also not a person of no consequence who would go to such a length for so little. A passage from the judgment of the High Court deserves to be quoted in this context :

29. Rai Bahadur G. P. Jaiswal was a man of great eminence. He was not only a leader of Hoshangabad bar but also a person with an illustrious record of public service. Between the years 1924 and 1926, he was a member of the Legislative Council of the Central Provinces, and during the years 1930 to 1933, he was a Minister. We are told that Rai Bahadur G. P. Jaiswal was possessed of considerable property, and the value of the guest house was nothing to allure him.

30. To accept the suggestion of counsel for the appellant would mean that Rai Bahadur G. P. Jaiswal and his clerk, Purushottam were guilty of forgery while Shri C. K. Adaliya and Shri T. P. Rawat, that of perjury. These witnesses have been closely cross-examined but nothing has been brought out to impeach their credibility as truthful witnesses.

7. There is therefore nothing unnatural in the bequest or in the circumstances pertaining to the execution or attestation of the will or in the evidence in this behalf. with regard to the minor discrepancies these were but natural having regard to the fact that evidence was recorded some eight years after the execution of the will. Taking into account totality of the circumstances, the conscience of the court is more than satisfied about the genuineness of the will and the due execution, attestation and proof thereof. In the result the appeal fails and is dismissed. No order as

to costs.

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