Ram Piari

Vs

Bhagwant and Others

Civil Appeal No. 4499 of 1986

(K. Jagannatha Shetty, R. M. Sahai JJ)

06.03.1990

JUDGMENT

R. M. SAHAI, J. -

1. Disinherited daughter, under a will alleged to have been executed by her father one day before his death bequeathing all his property in favour of sons of her only sister, has assailed validity of orders of three courts below for failure to apply the rule that presumption of due execution of a pious and solemn document like will stood rebutted due to existence of suspicious circumstances which the propounder could not rule out specially when he had taken active part in its execution.

2. Soft corner for grand-children or like ability for a son or daughter or their issues is not uncommon to our society. Rather at times it becomes necessary either to provide for the lesser fortunate or to avoid the property from passing out of the family. But when disputes arise between heirs of same degree, and the beneficiary even chooses to deny the blood ties, and that too unsuccessfully, then court's responsibility of performing its duties carefully and painstakingly multiplies. Unfortunately it was not properly comprehended by any of the courts, including the High Court which was swayed more by happy marriage of appellant, a consideration which may have been relevant for testator but wholly irrelevant for courts as their function is to judge not to speculate. Although freedom to bequeath one's own property amongst Hindu is absolute both in extent and person, including rank stranger, yet to have testamentary capacity or a disposing state of mind what is required of propounder to establish is that the testator at time of disposition knew and understood the property he was disposing and persons who were to be beneficiaries of his disposition. Prudence, however requires reason for denying benefit to those who too were entitled to bounty of testator as they had similar claims on him. Absence of it may not invalidate a will but it shrouds the disposition with suspicion as it does not give any inkling to the mind of testator to enable the court to judge if the disposition was voluntary act. Taking active interest by propounder in execution of will raises another strong suspicion. In H. Venkatachala Iyengar v. B. N. Thimmajamma (AIR 1959 SC 443 : 1959 Supp 1 SCR 426) it was held to render the will infirm unless the propounder cleared the suspicion with clear and satisfactory evidence. Mere execution of will, thus, by producing scribe or attesting witness or proving genuineness of testator's thumb impressions by themselves was not sufficient to establish validity of will unless suspicious circumstances, usual or special, are ruled out and the court's conscience is satisfied not only on execution but about its authenticity. See Kalyan Singh v. Chhoti ((1990) 1 SCC 266 : JT (1989) 4 SC 439).

3. Coming now to facts it has been found by all the three courts below that testator was a migrant from West Pakistan who after migration resided in village Rupena, was ill for some time and lived

with his daughter and her sons who are the beneficiaries six months prior to his death. It was further found that appellant was also one of the daughters. No finding was recorded that she or her sons had any sore or sour relations with testator. But the most important finding was that even thought the testator could sign yet he put his thumb mark on it. It was found to be genuine. The execution was thus held beyond doubt. But it was sufficient to put the courts on alert specially when the professional scribe fetched by beneficiary's father admitted that when he reached beneficiary's residence where the will was executed, he found testator covered with a quit in the afternoon of August with whom he did not talk nor enquire about his health. Unfortunately none of the courts paid any attention to these probably because they were swayed with due execution even when this Court in Venkatachaliah case (AIR 1959 SC 443 : 1959 Supp 1 SCR 426) had held that, proof of signature raises a presumption about knowledge but the existence of suspicious circumstances rebuts it. Importance of these aspects would have become apparent if they had examined the will which speaks for itself but which was taken for granted. Relevant part of it is extracted below :

> "They served me with money and the core of their heart. I am happy with their service. Therefore I make this will without any pressure of influence that during my lifetime I shall be owner of all my property both movable and immovable i.e., land, house etc. After my death my entire property, land, houses, shops, factory, machinery, residential house, residential goods, deposit in bank or post office (i.e. whatever is in my name in Punjab or any part of India) it will be in the ownership of and in possession of may grandsons (daughters' sons) Harmesh Singh, Mohan Lal, Sohan Lal son of Gurdev Singh son of Raunaq Singh in equal shares. Nobody else who may be my near relations or distantly related will have any right in my property".

What strikes immediately is professionalism of the recital. Grave doubt arises if recital of each and every item which could be visualised, was as a result of professional expertise or the old man was so unwell and died on the next day that he could not speak resulting in speculative narration of property depending on imagination what he must have been possessed of. Mention of house, factory, machinery and bank deposit was meaningful. House had already been sold. No evidence was led that he was possessed of another house or that he had any factory or machinery or bank deposits. Explanation of learned counsel that omission was as the respondent had challenged the very relationship of appellant could not remove the suspicion created by the recital that bequest was made not by an independent man after understanding or on his dictation, but was work of a scribe or beneficiary's father who did not take any chance and attempted to rope in every possible property that could have been conceived of. Happy marriage of financially well-settlement of appellant could not add to genuineness of will. The High Court in recording this finding, completely misdirected itself. More so, when no finding of dire circumstances of respondent to help out of which testator disinherited the other daughter, was recorded by any courts.

4. Ratio in Malkani v. Jamadar ((1987) 1 SCC 610 : AIR 1987 SC 767) was relied on to dissuade this Court from interfering, both, because the finding that will was genuine, was a finding of fact and omission to mention reason for disinheriting the daughter or taking prominent part by beneficiary by itself was not sufficient to create any doubt about the testamentary capacity was because of misunderstanding of the correct import of the decision and the circumstances in which it was rendered. Property in Malkani case ((1987) 1 SCC 610 : AIR 1987 SC 767) was land. Beneficiary was nephew as against married daughter. Anxiety in village to protect landed property or agricultural holdings from going out of family is well known. Even though it cannot be said to be hard and fast rule yet when disinheritance is amongst heirs of equal degree and no reason for

exclusion is disclosed, then the standard of scrutiny is not the same and if the courts below failed to be alive to it as is clear from their orders and then their orders cannot be said to be beyond review. Although this Court does not normally interfere with the findings of facts recorded by courts below, but if the finding is recorded by erroneous application of principle of law, and is apt to result in miscarriage of justice then this Court will be justified in interfering under Article 136.

5. For the reasons stated above, the appeal succeeds and is allowed. The order and judgment of all the three courts below, are set aside and the suit filed by the appellant for declaration that the will executed by her father was invalid, shall stand decreed. The appellant shall be entitled to its costs.

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