

Guro (Smt)

Vs

Atma Singh and Others

Civil Appeal No. 3163 of 1983

(S. C. Agrawal, Smt. M. S. Fathima Beevi JJ)

05.03.1992

JUDGMENT

S. C. AGRAWAL, J. –

1. The question for consideration in this appeal relates to the genuineness of a will said to be executed by one Ganga Singh whereby he bequeathed all his property to his distant cousin, Atma Singh, respondent 1, the grandson of the brother of the grandfather of Ganga Singh. Ganga Singh had a brother Ranga Singh and a sister Banti. Both, Ranga Singh and Banti had died during the life time of Ganga Singh. Smt. Guro, the appellant herein, is the daughter of Banti. At the time of his death, on October 10, 1968, Ganga Singh was having one-third share in land measuring 148 kls. 11 mls. in village Dall, Tehsil Patti, District Amritsar. On October 2, 1968, Ganga Singh is said to have executed the will in question whereby he bequeathed his entire property to respondent 1. After the death of Ganga Singh, proceedings regarding mutation of the lands in his share were initiated and in those proceedings respondent 1 sought mutation in his favour on the basis of the will. The appellant sought mutation as the nearest heir, being daughter of Ganga Singh's sister. The Assistant Collector, I Grade, Patti sanctioned the mutation in favour of the appellant and did not accept the will on the ground that it was not beyond suspicion. Thereafter respondent 1 filed a suit for declaration wherein he claimed one-third share of Ganga Singh on the basis of the will dated October 2, 1968. The said suit was contested by the appellant who disputed the genuineness of the will. Respondent 1 did not accept the claim of the appellant and disputed that she is the daughter of the sister of the testator, Ganga Singh. The Sub-Judge, I Class, Patti by his judgment dated July 25, 1972 decreed the said suit of respondent 1 on the view that the execution of the will by Ganga Singh was duly proved and at the time of the said execution, the testator was in a sound state of mind. The sub-Judge, however, found that the appellant is the daughter of Ganga Singh's sister Banti. On appeal, the Additional District Judge, Amritsar, by his judgment dated September 22, 1973, reversed the decree of the Sub-Judge and dismissed the suit of respondent 1, and found that the will was not proved to be a genuine document executed by Ganga Singh inasmuch as there were certain features which threw suspicion with regard to its valid execution. The High Court of Punjab and Haryana, by judgment dated October 28, 1982, allowed the second appeal filed by respondent 1 and while setting aside the judgment and decree of the appellate court, restored the judgment of the trial court on the view that the will had been validly executed. Feeling aggrieved by the said decision of the High Court, the appellant has filed this appeal.

2. In the will, the testator, Ganga Singh has stated that he had no issue nor he had any sister and that he had one brother who also died and he is the owner of the property and the land situated in village Dall. The testator has further stated that he has been ill for a long time and has become blind and was now seriously ill and there is no hope for his survival. He has further stated that after his death,

Atma Singh, son of Mangal Singh, son of Bahadur Singh would be owner of his property because he was his real brother and he would be really entitled. The scribe of the will was Manohar Lal, a shopkeeper in Dall, and there is thumb impression of the testator. It has been attested by five persons, namely, Kehar Singh, Sarpanch Lambardar, Dall, Surjan Singh, Chanan Singh, Sardara Singh and Hazara Singh. In order to prove the will respondent 1 examined the scribe Manohar Lal (PW 1) and two attesting witness Kehar Singh (PW 2) and Surjan Singh (PW 3).

3. With regard to proof of a will the law is well settled that the mode of proving a will does not ordinarily differ from that of proving any other document except as to the special requirement prescribed in the case of a will by Section 63 of the Indian Succession Act. The onus of proving the will is on the propounder and in the absence of suspicious circumstances surrounding the execution of the will, proof of testamentary capacity and signature of the testator as required by law is sufficient to discharge the onus. Where, however there were suspicious circumstances, the onus would be on the propounder to explain them to the satisfaction of the court before the will could be accepted as genuine. Such suspicious circumstances may be a shaky signature, a feeble mind and unfair and unjust disposal of property or the propounder himself taking a leading part in the making of the will under which he receives a substantial benefit. The presence of suspicious circumstances makes the initial onus heavier and the propounder must remove all legitimate suspicion before the document can be accepted as the last will of the testator. (S. Venkatachala Iyengar v. B. N. Thimmajamma (1959 Supp 1 SCR 426 : AIR 1959 SC 443), Rani Purnima Devi v. Kumar Khagendra Narayan Dev ((1962) 3 SCR 195 : AIR 1962 SC 567), Jaswant Kaur v. Amrit Kaur ((1977) 1 SCC 369 : (1977) 1 SCR 925)).

4. In the instant case, the appellate court noticed the following suspicious circumstances :

- (1). The will mentions that the testator had been ill for a long time and was seriously ill at the time of execution of the will.
- (2). While mentioning that he had one brother who had died, the testator had stated that he did not have any sister, which was not correct.
- (3). Respondent 1, Atma Singh, the sole legatee, has been wrongly described as the real brother of the testator.
- (4). No reasons are mentioned in the will why the appellant, who was the natural heir of the testator was being ignored.
- (5). Although the testator was literate, the will does not bear his signatures and bears his thumb impression.
- (6). The will is an unregistered document not scribed by a regular deed writer and as such could be prepared at any time.
- (7). The will was executed on October 2, 1968 and within eight days of the execution of the will the testator died on October 10, 1968.

5. The appellate court has found that respondent 1 had made contradictory statements with respect to his presence at the time of the execution of the will and that in his testimony he claimed that he was not present at the time of the execution of the will but in his statement before the revenue authorities in the mutation proceedings, respondent 1 had stated that the will was executed in his

presence and was thumb marked by Ganga Singh and when confronted with the said statement, respondent 1 did not deny the correctness of the record prepared but tried to explain his earlier statement by stating that what he meant was that he had been informed by Ganga Singh about the execution of the will. The appellate court also found that the scribe, Manohar Lal had made contradictory statements about the illness of Ganga Singh and that he first stated that Ganga Singh was not ill at the time of the execution of the will and had subsequently fallen ill and died of that illness but on further cross-examination, he stated that Ganga Singh had been lying ill since two years prior to the execution of the will. The appellate court has pointed out that Kehar Singh and respondent 1. Atma Singh had contradicted the recital in the will with respect to the illness of Ganga Singh and have stated that he fell ill 7 or 8/10 days prior to his death. The appellate court was of the view that the recital in the will to the effect that Ganga Singh had been ill since long leads to the conclusion that due to that illness Ganga Singh was of feeble mind and it was, therefore, necessary for the plaintiff-respondent to prove that advice for ignoring the natural heir was available to Ganga Singh and the will was not the outcome of any undue influence on the part of the plaintiff who was the sole legatee. Keeping in view the aforesaid circumstances, the appellate court held that the will was not proved to be genuine document executed by Ganga Singh.

6. The High Court, in second appeal, reversed the findings recorded by the appellate court and held that the incorrect statements in the will with regard to testator having no sister and respondent 1 being his real brother could not cast any doubt on the contents of those parts of the will by which specified property was bequeathed to the legatee and the legatee could not be made to suffer by some untruthfulness on the part of the testator. As regards the thumb impression instead of signatures of the testator on the will, the High Court observed that the extent of literacy of the testator is not apparent from the record and that it was not the case of the appellant that the thumb impression on the will had been obtained after the testator had actually died and there is no evidence to show that he was not in his senses when the scribe asked him to put his thumb impression on the will. As regards the contradictory statements made by respondent 1 about his presence at the time of execution of the will, the High Court observed that this lapse on the part of respondent 1 may be due to faulty memory or may be he was trying to avoid a criticism that he had tried to exercise some influence in getting the will executed in his favour.

7. The High Court, in our opinion, was not justified in reversing the findings of fact recorded by the appellate court which were based on a proper appreciation of the evidence on record. In doing so, the High Court has failed to attach sufficient importance to the various suspicious features relating to execution of the will that were pointed out by the appellate court. The High Court has not even noticed the fact that the testator had died within eight days of the execution of the will and there is a recital in the will that the testator had been ill for a long time and was seriously ill at the time of execution of the will. In view of the said recital, it was necessary for the plaintiff-respondent 1 to adduce satisfactory evidence with regard to the nature of the illness of the testator and about his mental capacity to execute the will. The incorrect statements in the will with regard to testator having no sister and respondent 1 being his real brother have to be considered in this background. The circumstance that the testator had not put his signature and had put only his thumb impression on the will, has been brushed aside by the High Court on the view that there is no evidence on record with regard to the literacy of the testator. We find that the scribe, Manohar Lal, PW I, has stated that Ganga Singh was literate person and had been writing receipts etc. even earlier. In the circumstances, it was necessary for the plaintiff-respondent to adduce satisfactory evidence to show why, instead of signatures, the thumb impression of the testator was obtained on the will. Another significant feature which has been brushed aside by the High Court is about the role of respondent 1 in the execution of the will under which he is the sole legatee. It has been stated by Manohar Lal,

PW 1, that Tara Singh, the son of respondent 1 had come to call him. To the same effect is the testimony of Kehar Singh, PW 2 and Surjan Singh, PW 3, the attesting witnesses. The will was executed outside the residence of respondent 1 on a bahi brought by Tara Singh the son of respondent 1. Respondent 1 has made contradictory statements about his presence at the time of the will. The High Court has ignored these contradictions in the statement of respondent 1, by a simple observation that this lapse on the part of respondent 1 may be due to faulty memory or maybe he was trying to avoid the criticism that he has tried to exercise some influence to get the will executed in his favour. Only two of the five attesting witnesses have been examined. Both of them, viz, Kehar Singh (PW 2) and Surjan Singh (PW 3) have made an effort to deny the illness of the testator at the time of the execution of the will and have also departed from their earlier statements recorded during the mutation proceedings. In these circumstances, it was necessary that the other attesting witnesses should also have been examined by plaintiff-respondent 1. Taking into consideration the aforesaid features, we are of the view that the High Court was not justified in reversing the findings of fact recorded by the appellate court that will is not proved to be a genuine document executed by Ganga Singh and in holding that the execution of the will had been satisfactorily proved by respondent 1.

8. The appeal is therefore, allowed. The judgment and decree of the High Court of Punjab and Haryana dated October 28, 1982 in Regular Second Appeal No. 1504 of 1973 is set aside and judgment and decree of the Additional District Judge, Amritsar dated September 22, 1973 dismissing the suit of respondent 1 are restored. There will be no order as to costs.

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