

Misri Lal (dead) by Lrs.

Vs

Daulati Devi

(Dr. A.S. Anand, K. Venkataswami JJ)

31.07.1997

JUDGMENT

K. VENKATASWAMI, J.

1. The legal representatives of the first defendant and the second defendant in Probate Suit No.26/73 on the file of the Second Additional District Judge, Varanasi, are the appellants in this appeal. The respondents herein had filed the said suit on the basis of a Will dated 3.10.72 alleged to have been executed by one Smt.Bhullan Devi in their favour. The property in dispute is a house property.

2. Indisputably, the appellants herein are the close agnates of the deceased Bhullan Devi's husband Ram Lal. Likewise the respondents herein belong to a different caste. That appears to be the sheet anchor of the appellants' case for attacking the genuineness of the Will in dismissed.

3. Broadly put the objections raised by the appellants before the Trial Court for granting Probate were: (a) that the beneficiaries (respondents herein) belong to a different caste and that the recital in the Will that the beneficiaries were looking after the needs of the testatrix were absolutely false and were without any foundation; (b) that the testatrix at the time of her death, namely, 3.10.72, was very old, weak and hard of hearing and was not at all in a disposing state of mind; (c) that there were no good reasons for ignoring the appellants and selecting the respondents to bequeath the suit house; (d) that the appellants and the family members were looking after the needs of the testatrix and the respondents taking advantage of their absence from the village at the time of death of testatrix, removed some blank papers and other deeds from the testatrix's house and using the same forged the Will in question; and (e) that the testatrix was a literate person and she used to sign papers, but the Will in question bears thumb marks which were not the thumb marks of the testatrix.

4. In support of their application for Probate, the respondents (applicants before the Trial Court) inter alia examined one attesting witness (P.W.1) and the scribe (P.W.2). The evidence let in on the side of the respondents through P.Ws.1 and 2 and their own to support the pleadings for grant of Probate was to the effect that the father-in-law of the respondents by name Mahabir was a close friend and co-worker of Bhullan Devi's husband in Railway. The said Mahabir has given to him free of cost the land on which the suit house was constructed by the husband of Bhullan Devi. The husband of Bhullan Devi died in the year 1950. Thereafter, the relationship between Bhullan Devi and that the families of appellants was anvrning on cordial. Bhullan Devi was not looked after by her relations and the respondents being their neighbours and old family friends looked after Bhullan Devi's comforts as if she was their mother-in-law. It is also brought on record by evidence that on the death of Ram Lal Bhullan Devi's husband, the father of the defendants (grandfather of appellants 1, 2 and 3 and father of appellant 4) moved the Court for obtaining Succession Certificate claiming

to be the sole heir to succeed to the estate of Ram Lal, but on objection he withdrew the case. It is also on record that Bhullan Devi issued a Public Notice claiming to be the sole heir to her deceased husband. In that capacity she has executed a waqf deed in respect of some property and also alienated another property. Those alienations were not questioned by the appellants herein. The attesting witness and the scribe as P.Ws.1 and 2 have also clearly spoken about the true and valid execution of the Will as well as to the sound and disposing state of mind of the testatrix at the time of the execution of the Will. It was also brought on record by evidence that Bhullan Devi, testatrix, while executing the waqf deed had not signed but put her thumb impression.

5. The appellants in support of the objections as set out above have also led oral evidence. The Trial Court framed three issues on the basis of the pleadings and considering the merits in the light of the pleadings, oral and documentary evidence and held that the Will was not validly executed and the respondents (applicants) were not successful in clearing the suspicious circumstances surrounding the execution of the Will. In coming to that conclusion the Trial Court seems to have been influenced by the fact that the applicants before it belonged to a different caste and there were no good reasons for ignoring the close relations like the appellants. The Trial Court also was not prepared to accept the evidence of the scribe and the attesting witness.

6. Consequently, the Trial Court dismissed the Probate Suit filed by the respondents herein.

7. Aggrieved by the judgment of the Trial Court, the respondents preferred First Appeal No.171/75 in the High Court of judicature at Allahabad.

8. The learned Single Judge by its judgment dated 12.4.78 on a proper analysis of the evidence oral and documentary disagreeing with the findings of the Trial Court found that the Will in question was genuine and the same was validly executed and the respondents herein were entitled to the Probate prayed for in the Trial Court. Accordingly, he allowed the appeal.

9. Before us, Mr.Pramod Swarup, the learned counsel appearing for the appellants, reiterated the same objections raised before the Trial Court.

10. After going through the judgments of the Trial Court and the Appellate Court as well as the oral and documentary evidence placed before us, we are of the view that the High Court has not exceeded its appellate jurisdiction in re-appreciating the oral evidence to upset the findings of the Trial Court. The learned Judge while dealing with the objection regarding the thumb impression has stated that it is not unnatural for an old person to prefer to put thumb mark instead of signature. In addition to that as we noticed earlier, the testatrix herself in executing the waqf deed in respect of other property has conveyed the file by affixing her thumb impression only. Therefore, the doubt regarding execution of the Will on the basis of thumb impression has been rightly overruled by the High Court.

11. Likewise, the objection that the beneficiaries belonged to a different caste and the testatrix would not have preferred them was also rightly answered by the learned Judge on the basis of the evidence. That is, they as neighbours looked after the comforts of the testatrix at the time of need and the appellants and their family members never looked after the testatrix. It is also found by the learned Judge that even during the life-time of testatrix's husband they were living separately away from their relations and after the death of her husband she was living alone and managing her own affairs without the aid or support of any of their relations. It was also found by the learned Judge on appreciation of evidence that the site on which the suit house was constructed was given by the

father-in-law of the beneficiaries free of cost and that could have been one of the reasons for preferring them. Further we have noticed earlier the legal proceedings between the testatrix and appellants' family members. As noticed earlier, the Trial Court disbelieved the evidence of P.Ws.1 and 2, the attesting witness and the scribe. The High Court, however, on re-appreciation of evidence which is within its domain has believed them and found the execution of the Will as true, valid and that the testatrix was in sound disposing state of mind. The alleged suspicious circumstances pleaded by the appellants did not find favour with the High Court.

12. We find that the High Court has not exceeded its limit in re-appreciating the evidence and consequently reversing the findings of the Trial Court to uphold the validity and genuineness of the Will. We agree with the findings of the High Court.

13. In the result, the appeal fails and the same is dismissed with no order as to costs.