

Gurdial Kaur

Vs

Kartar Kaur

(G. B. Pattanaik G. N. Ray JJ)

26.03.1998

ORDER

1. This appeal is directed against the judgment dated November 26, 1984 passed by the Punjab and Haryana High Court in Appeal No. 2995 of 1984. By the impugned judgment, the High Court dismissed the said appeal by which the will stated to have been executed by one Harnam Singh in favour of the appellants was not accepted to be a valid one by the learned District Judge in setting aside the order passed by the Trial Court. There is no dispute in this case that the will in question was a registered will and there is an endorsement by the Sub-Registrar that the executant of the will was introduced to him by one Puran Singh, the Lambardar of a village and the executant had admitted the execution of the will in his presence and also signed in his presence.

2. The Court of Appeal below has indicated several factors which according to the learned Judge, had raised reasonable suspicion about the genuineness and valid execution of the said will. It has been indicated that some of the natural heirs had been disinherited in the said will without any reason for such action. It has also been indicated that there was not even a whisper in the original written statement filed by the legatees to the will about the existence of such will in the Declaratory Suit filed against them. Only when one heir was left out and added as a party defendant, for the first time, in the additional written statement the execution of will was mentioned. The learned District Judge has also indicated the reason for which he had doubted that the executant of the will had been identified by the Lambardar because the Sub-Registrar could not say whether the Lambardar identifying the executant was a Harijan Lambardar or someone else. It may also be indicated here that the scribe of the will, in his deposition, stated that he did not know the executant of the will.

3. The law is well-settled that if there is suspicious circumstance about the execution of the will, it is the duty of the person seeking declaration about the validity of the will to dispel such suspicious circumstances. In this connection, reference may be made to the decision of this court in Rani Purnima Debi and another Vs. Kumar Khagendra Narayan Deb and another (AIR 1962 SC 567). It has been held in the said decision that if a will being registered and having regard to the other circumstances, is accepted to be genuine, the mere fact that the will is a registered will, it will not by itself be sufficient to dispel all suspicions regarding the validity of the will where suspicions exist. It has been held that the broad statement by witness that he had witnessed the testator admitting execution of the will was not sufficient to dispel suspicions regarding due execution and attestation of the will. It has been specifically held that registration of the will by itself was not sufficient to remove the suspicion. Relying on an earlier decision of this Court reported in AIR 1959 SC 443, it has been held in the said decision that where the propounder was unable to dispel the suspicious circumstances which surrounded the question of valid execution and attestation of the will, no letters of administration in favour of the propounder could be granted.

4. The law is well settled that the conscience of the Court must be satisfied that the will in question was not only executed and attested in the manner required under the Indian Succession Act, 1925 but it should also be found that the said will was the product of the free volition of the executant who had voluntarily executed the same after knowing and understanding the contents of the will. Therefore, whenever there are any suspicious circumstances, the obligation is cast on the propounder of the will to dispel suspicious circumstances. As in the facts and circumstances of the case, the Court of Appeal below did not accept the valid execution of the will by indicating reasons and coming to a specific finding that suspicion had not been dispelled to the satisfaction of the Court and such finding of the Court of Appeal below has also been upheld by the High Court by the impugned judgment, we do not find any reason to interfere with such decision. This appeal, therefore, fails and is dismissed without any order as to costs.