SUPREME COURT OF INDIA

Ramabai Padmakar Patil

Vs.

Rukminibai Vishnu Vekhande

C.A.No.15697 of 1996

(Y. K. Sabharwal and G. P. Mathur, JJ.)

14.08.2003

JUDGEMENT

G. P. MATHUR, J.:-

1. This appeal by special leave has been preferred by the plaintiff against the judgment and decree dated 27-4-1995 of High Court of Bombay by which the second appeal preferred by her was dismissed and the judgment and decree dated 7-4-1993 passed by the District Judge, Thane was affirmed.

2. The appellant Smt. Ramabai filed a suit for a declaration that she had become owner and occupant of the suit property as per the Will dated 5-4-1976 and for injunction for restraining the defendants and their agents, etc. from interfering with her peaceful possession over the aforesaid property. The defendant Nos. 1 and 5 are the real sisters of the plaintiff and defendant Nos. 6 to 8 are the children of a deceased sister of the plaintiff, namely, Smt. Gajarubai. The suit was filed on the ground that the property in dispute, which is a house and agricultural land, belonged to Madhav who was father of the plaintiff and defendant Nos. 1 to 5 and after his death, the same was inherited

by their mother Smt. Yamunabai and she became the owner thereof. Smt. Yamunabai executed a registered Will by which she bequeathed the entire property to the plaintiff. Smt. Yamunabai died on 11-1-1980 and thereafter the plaintiff came in possession over the property in dispute. However, the defendants got the names of all the heirs of Madhav mutated over the property in dispute and thereafter started interfering with the plaintiffs possession thereof. The suit was accordingly filed claiming a decree of declaration and injunction. The defendant Nos. 1 to 5 contested the suit on the ground, inter alia, that the property in dispute was ancestral property in the hands of Madhav and after his death Smt. Yamunabai did not become the exclusive owner thereof: that the tenancy rights were inherited by all the heirs of Madhav by succession : that the house was built by father of Madhav and it being ancestral in nature, the same was inherited by all the heirs, that Madhav died in the year 1957 and, therefore, the succession would be governed by Hindu Succession Act and that Smt. Yamunabai did not execute any Will in favour of the plaintiff on 5-4-1976 and the same was not binding upon the defendants. It was specifically pleaded that the share of the plaintiff was only 1/7 and therefore, no decree for injunction could be passed against the defendants.

3. The parties adduced oral and documentary evidence in support of their case. The learned Civil Judge (Jr. Divn.) Palghar, decreed the suit on 4-2-1988 declaring that the plaintiff had become exclusive owner of the property in dispute on the basis of the Will dated 5-4-1976. He further passed a decree for injunction restraining the defendants from causing any interference in the possession of the plaintiff over the property in dispute. Feeling aggrieved by the aforesaid judgment and decree, defendant Nos. 1 to 5 preferred an appeal before the District Judge, Thane, who allowed the same by the judgment and decree dated 7-4-1993 and dismissed the suit. The plaintiff preferred a second appeal which was dismissed by the High Court on 27-4-1995 and the decree passed by the learned District Judge dismissing the suit was affirmed.

4. Shri V. A. Mohta, learned senior counsel for the appellant has submitted that after the death of Madhav which took place on 6-6-1956, his widow Smt. Yamunabai had become the exclusive owner of the entire property. The plaintiff appellant had become a widow in the lifetime of her parents and was residing with them. It was for this reason that Smt. Yamunabai had executed a Will in favour of the plaintiff and the same was got registered. Learned counsel has further submitted that the learned District Judge and also the High Court have taken a completely perverse view in discarding the Will solely on the ground that Smt. Yamunabai had excluded her other daughters and had given the entire property to the plaintiff. It has been urged that in the facts and circumstances of the case, the conduct of Smt. Yamunabai was most natural and no doubt could be raised regarding the authenticity of the Will merely on the ground that no provision was made for the remaining daughters. It has also been urged that the Will was executed and was registered on 5-4-1976 whilst Smt. Yamunabai died after considerable period on 11-1-1980, which itself showed that the same was executed when she was in proper and fit mental state and it had not been obtained by putting any undue influence. Shri A. S. Bhasme, learned counsel for the respondents has, on the other hand, submitted that the mother had equal love and affection for all her children and there was no material on record to show that Smt. Yamunabai was in any manner displeased or unhappy with her other daughters and as such she would not have completely disinherited them and this feature rendered the alleged execution of Will by her as highly suspicious and unnatural. He has further submitted that the learned District Judge and the High Court had given good reasons for discarding the Will and the findings recorded by them being based upon proper appraisal of evidence, should not be

interfered with by this Court. Learned counsel has also urged that Smt. Yamunabai had not become exclusive owner of the property after the death of Madhav as the succession would be governed by Hindu Succession Act and consequently even if the Will was accepted, the plaintiff would not become owner of the entire property.

5. Before we advert to the submissions made by learned counsel for the parties, it will be useful to briefly notice the legal position regarding acceptance and proof of a Will. Section 63 of Indian Succession Act deals with execution of unprivileged Wills. It lays down that the testator shall sign or shall affix his mark to the Will or it shall be signed by some other person in his presence and by his direction. If further lays down that the Will shall be attested by two or more witnesses, each of whom has seen the testator signing or affixing his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator and each of the witnesses, shall sign the Will in the presence of the testator. Section 68 of the Evidence Act mandates examination of one attesting witness in proof of a Will, whether registered or not. The law relating to the manner and onus of proof and also the duty cast upon the Court while dealing with a case based upon a Will has been examined in considerable detail in several decisions of this Court viz. H. Venkatachala Iyengar v. B. N. Thimmajamma and others, AIR 1959 SC 443, Rani Purnima Debi and another v. Kumar Khagendra Narayan Deb and another, AIR 1962 SC 567 and Shashi Kumar Banerjee and others v. Subodh Kumar Banerjee and others, AIR 1964 SC 529. It will be useful to reproduce the relevant part of the observations AIR 1964 SC 519, Para 4 made by this Court in the Constitution Bench decision in Shashi Kumar Banerjee, (supra) which are as under :

"The mode of proving a Will does not ordinarily differ from that of proving any other document except as to the special requirement of attestation prescribed in the case of a Will by S. 63, 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 the signature of the testator as required by law is sufficient to discharge the onus. Where however there are suspicious circumstances, the onus is on the propounder to explain them to the satisfaction of the Court before the Court accepts the Will as genuine. Where the caveator alleges undue influence, fraud and coercion, the onus is on him to prove the same. Even where there are no such pleas but the circumstances give rise to doubts, it is for the propounder to satisfy the conscience of the Court. The suspicious circumstances may be as to the genuineness of the signature of the testator, the condition of the testator's mind, the dispositions made in the Will being unnatural, improbable or unfair in the light of relevant circumstances or there might be other indications in the Will to show that the testator's mind was not free. In such a case the Court would naturally expect that all legitimate suspicion should be completely removed before the document is accepted as the last Will of the testator. If the propounder himself takes part in the execution of the Will which confers a substantial benefit on him that is also a circumstance to be taken into account, and the propounder is required to remove the doubts by clear and satisfactory evidence. If the propounder succeeds in removing the suspicious circumstances the Court would grant probate, even if the Will might be unnatural and might cut off wholly or in part near relations."

6. The relevant facts may now be examined. It is not in dispute that Smt. Yamunabai had no son but

had 7 daughters. The plaintiff-appellant-Smt. Ramabai became a widow at a very young age during the lifetime of her father. Since then, she was living with her parents and not at the place of her husband or in-laws. It has come in evidence that she was looking after her mother for more than 20 years. The other daughters of Smt. Yamunabai are living with their husbands at their respective places. Smt. Yamunabai had gone to the office of Sub-Registrar, Palghar on 5-4-1976 for the purposes of registration of the Will and she died 3 years and 9 months thereafter on 11-1-1980. The Will was attested by two persons, namely, P.W. 2 Raghunath Govind Sogale and Shaikh, out of whom the former was examined as a witness in Court. There is no dispute regarding these facts. There is nothing more shocking for the parents than the death of a grown up son or a young daughter becoming widow. It is most natural for the parents to have the greatest amount of sympathy for their widowed daughter. The defendants have led no evidence to show that Smt. Ramabai was getting anything for her sustenance from the family members of her late husband. She was thus entirely dependent upon her own parents. According to Smt. Ramabai, her father Madhav died on 6-6-1956 though according to the defendants he died sometime in the year 1957. At any rate at least from 1957 till her death, the mother Smt. Yamunabai was being looked after by the plaintiff-Smt. Ramabai. The defendants who are the other daughters of Smt. Yamunabai are residing at different places with their husbands. In such circumstances the execution of the Will by Smt. Yamunabai in favour of her widowed daughter Smt. Ramabai, who was living with her for over 20 years and was looking after her, appears to be most natural and probable.

7. The main reason which weighed with the learned District Judge in discarding the Will, which has also appealed to the High Court, is that Smt. Yamunabai completely disinherited her other daughters and gave the entire property to Smt. Ramabai. In our opinion, the fact that Smt. Yamunabai excluded all other daughters and gave the entire property to the plaintiff-Smt. Ramabai could not be a ground to cast any doubt regarding the authenticity of the Will in the facts and circumstances of the case in hand. It is not a case of exclusion of a son who may have been living with the parents or looking after them. It is a case of making provision for a widowed daughter who had been left a destitute on account of death of her husband at a very early age. If the parental property was to be divided equally amongst all the seven sisters, the share inherited by Smt. Ramabai would have been quite small making it difficult for her to survive. The house is situate in a village and is not in a big town or city where it may have any substantial value. In fact, if the background in which the Will was executed is examined carefully, it would be apparent that this was the most natural conduct of the mother and giving of equal shares to all the daughters would have entailed a serious hardship to the plaintiff-Smt. Ramabai.

8. A Will is executed to alter the mode of succession and by the very nature of things it is bound to result in either reducing or depriving the share of a natural heir. If a person intends his property to pass to his natural heirs, there is no necessity at all of executing a Will. It is true that a propounder of the Will has to remove all suspicious circumstances. Suspicion means doubt, conjecture or mistrust. But the fact that natural heirs have either been excluded or a lesser share has been given to them, by itself without anything more, cannot be held to be a suspicious circumstance especially in a case where the bequest has been made in favour of an offspring. In PPK Gopalan Nambiar v. PPK Balakrishnan Nambiar and others, AIR 1995 SC 1852 it has been held that it is the duty of the propounder of the Will to remove all the suspected features, but there must be real, germane and valid suspicious features and not fantasy of the doubting mind. In this case, the fact that the whole

estate was given to the son under the Will depriving two daughters was held to be not a suspicious circumstance and the finding to the contrary recorded by the District Court and the High Court was reversed. In Pushpavati and others v. Chandraja Kadamba and others, AIR 1972 SC 2492, it has been held that if the propounder succeeds in removing the suspicious circumstance, the Court would have to give effect to the Will, even if the Will might be unnatural in the sense that it has cut off wholly or in part near relations. In Rabindra Nath Mukherjee and another v. Panchanan Banerjee (dead) by LRs. and others (1995) 4 SCC 459, it was observed that the circumstance of deprivation of natural heirs should not raise any suspicion because the whole idea behind execution of the Will is to interfere with the normal line of succession and so, natural heirs would be debarred in every case of Will. Of course, it may be that in some cases they are fully debarred and in some cases partly. The concurrent finding recorded by the District Court and the High Court for doubting the genuineness of the Will on the aforesaid ground was reversed. 1995 AIR SCW 2885

AIR 1995 SC 1684 : 1995 AIR SCW 2631

9. The learned District Judge has observed that Smt. Yamunabai was very old when she executed the Will and she was hard of hearing and was unable to walk. He further observed that Chhaya Dighe who typed the Will and one Shri Tiwari, Advocate, who was present at the time of preparation and execution of the Will, were not examined and these facts together created a doubt regarding the authenticity of the Will. As discussed earlier, in view of S. 63 of Indian Succession Act and the proviso to S. 68 of the Evidence Act, the requirement of law would be fully satisfied if only one of the attesting witness is examined to prove the will. That this had been done in the present case by examining P.W. 2 Raghunath Govind Sogale cannot be disputed. No infirmity of any kind had been found in the testimony of this witness. Chhaya Dighe merely typed the Will and she is not an attesting witness nor it is anybody's case that Smt. Yamunabai had put her thumb impression on the Will in her presence, therefore, her examination as a witness was wholly redundant. The mere non-examination of the Advocate who was present at the time of preparation or registration of the Will cannot, by itself, be a ground to discard the same. The fact that Smt. Yamunabai was hard of hearing or that she was unable to walk does not lead to an inference that her mental faculties had been impaired or that she did not understand the contents of the document which she was executing. It is important to note that Smt. Yamunabai personally came to the office of the Sub-Registrar and her death took place after a considerable period i.e. 3 years and 9 months after the execution of the Will. No evidence has been adduced by the defendants to show that at the time of the execution of the Will she had been suffering from any such ailment which had impaired her mental faculties to such an extent that she was unable to understand the real nature of the document which she was executing. We are, therefore, clearly of the opinion that the finding recorded by the learned District Judge, which has been affirmed by the High Court in second appeal, is not based upon a correct application of legal principles governing the proof and acceptance of Will and the same is completely perverse. The aforesaid finding is accordingly set aside. The finding recorded by the trial Court that the Will is genuine is hereby restored.

10. The next question which requires consideration is whether the plaintiff-appellant would become the owner of the entire property which belonged to Madhav. The learned Civil Judge (Jr. Divn.) has held that as Madhav died on 6-6-1956, Smt. Yamunabai after coming into force of Hindu Succession Act became owner of entire property. The learned District Judge has reversed this

finding and has held that Madhav died sometime in the year 1957 i.e. after 17-6-1956 when Hindu Succession Act had come into force and consequently Smt. Yamunabai and all her daughters would get equal share in the property. The High Court did not go into this question at all and dismissed the second appeal after expressing agreement with the finding of the learned District Judge regarding the doubtful character of the Will. We have carefully perused the judgment of the trial Court and also of the first appellate Court on this point and we are of the opinion that the finding recorded by the learned District Judge to the effect that Madhav died sometime after enforcement of Hindu Succession Act is based upon a correct and proper appraisal of evidence and no exception can be taken to the same. In this view of the matter, Smt. Yamunabai will have only 1/8th share in the estate left by Madhav which alone would go to the plaintiff on the basis of the Will executed in her favour.

11. In the result, the appeal is allowed and the judgment and decree passed by the District Judge and also by the High Court are set aside. The decree passed by the learned Civil Judge (Jr. Divn.) is modified and it is declared that the plaintiff-appellant, in addition to her own share, will also be entitled to the 1/8th share of her mother Smt. Yamunabai on the basis of the Will executed in her favour. No costs.

Appeal allowed.