

SUPREME COURT OF INDIA

Vidya Wanti

Vs.

Durga Dass

C.A.No.3885 of 2007

(P.P.Naolekar and Aftab Alam JJ.)

09.05.2008

JUDGMENT

Aftab Alam, J.

1. The 1/5th share of one Amar Nath (deceased), measuring to an area of 73 kanals 1 marla, situate in the Revenue Estate of Nadala, Tehsil Bholath, District Kapurthala is the subject-matter of dispute between the parties. On the one side is the plaintiff-respondent Durga Dass, the younger brother of Amar Nath, who claimed the latter's share in the land on the basis of a will, dated August 20, 1987 said to have been executed in his favour. On the other side are the defendant-appellants Vidya Wanti (widowed wife) and Santosh Kumari (daughter) of the deceased Amar Nath. They claimed the share in the land by devolution.

2. The land (in which the 1/5th share of Amar Nath is the subject- matter of dispute) was taken in the name of Badri Dass, the father of Amar Nath and Durga Dass and two other brothers and a sister. As a matter of fact, Badri Dass had made an application for the purchase of land from the Government of India, Department of Rehabilitation under the provisions of the *Displaced Persons (Compensation and Rehabilitation) Act, 1954*. He died sometime in the year 1958 before any action was taken on his application. Long after his death, the conveyance deed, dated March 6, 1965 for the land came in the name of the deceased-applicant and on March 19, 1965 the transfer of the land was registered in the name of Badri Dass. The mutation in the revenue records was of course made in the names of Amar Nath, Durga Dass and the two other sons and a daughter of Badri Dass, namely, Diwan Chand, Gurbux Lal and Sumtra Rani.

3. After the death of Amar Chand on March 26, 1988, a dispute arose between the parties over the mutation of his 1/5th share in the total land. Durga Dass claimed mutation of Amar Nath's share in his favour on the basis of a will executed by him on August 20, 1987 in his favour. The wife and the daughter of Amar Nath contested his claim for mutation. They stated that Amar Nath had not executed any will in favour of his younger brother Durga Dass and asserted that the will, dated August 20, 1987 was fake and fictitious. In the mutation proceedings, the other two brothers Diwan Chand and Gurbux Lal apparently supported the

wife and the daughter of their deceased brother Amar Nath and filed affidavits stating that the Will relied upon by Durga Dass was a fictitious document. The Assistant Collector, 1st Grade, Bholath, rejected the claim of Durga Dass and directed that the name of the deceased Amar Nath be substituted in the revenue records by his widowed wife and daughter. Durga Dass took the revenue proceedings in appeal but, on being unsuccessful there, he finally filed a suit for declaration of his title and confirmation of possession in regard to the 1/5th share of Amar Nath in the total area of the land.

4. His case was that though the conveyance deed came in the name of the father, Badri Dass, because the application was made by him, it was he (the plaintiff) alone who paid the consideration money and completed all the formalities for registration of the transfer deed. His other brothers, including Amar Nath, had no concern with the land. In the revenue records, the land was recorded in the names of all the four brothers and the sister simply because the deed of conveyance was registered in the name of their deceased father. He claimed that the land had remained all along under his exclusive cultivating possession and the other brothers and/or the sister had no interest in it. His further case was that in recognition of the actual facts Amar Nath executed the will on August 20, 1987 bequeathing his 1/5th share to him (the plaintiff) so that his heirs may not claim his share in the land by devolution due to any misunderstanding.

5. The defendants resisted the plaintiffs' suit on grounds already noted above. In the written statement filed on their behalf the will dated August 20, 1987, forming the basis of the plaintiffs claim was described as fake and fictitious. In addition, it was stated that Amar Nath was an educated man and apprehending some trouble from the plaintiff he, before his death, executed a legally valid registered will in favour of the defendants. Curiously, however, apart from making a mention of a later will no details in regard to its contents were stated in the written statement nor were the will produced before the trial court.

6. In support of his case, the plaintiff examined three witnesses including himself. He also produced the will dated August 20, 1987 both in original and as a certified copy. He also produced copies of some revenue records in support of his claim of exclusive possession over the land in question.

7. The will which was, according to the plaintiff, executed by Amar Nath on August 20, 1987 is a simple document. It started with the testator stating that he was about 70 years old and was in good health but no one knew when his end would come. He further stated that his father was the owner of approximately 9 acres of land in Nadala Rakba under Conveyance Deed dated March 19, 1965 but the consideration money for the sale was paid by his real brother Durga Dass and registration was also done by him. After the death of their father the land was mutated in the names of all his legal heirs, though Durga Dass alone was in possession of the land and the rest of them were not remotely concerned with the land. He further stated that by that will he bequeathed his share in the land to his real brother Durga Dass and after his death Durga Dass would be the owner of his share. He proceeded to say that he was executing the will to avoid any dispute after his death between his brother and his legal heirs. He concluded by stating that he was making the will in full senses and he had got

the contents of the will read over to him and was signing it as his testament. The will was signed by Amar Nath in Urdu.

8. The will was written by Varinder Kumar and it was witnessed by Tara Singh and Jagat Singh-Nambardar. Before the trial court, Varinder Kumar was examined as PW-1. He deposed that he had scribed the will as desired by Amar Nath and he had written it as per his dictation. After it was scribed, it was read over to the executant and he signed it in their presence. He further stated that it was attested by Jagat Singh-Nambardar and Tara Singh, the marginal witnesses. The will also bore his signature.

9. One of the witnesses of the will Tara Singh was examined as PW-2. He stated that the testator had signed it before him and Jagat Singh-Nambardar and then on being asked by the testator he and Jagat Singh-Nambardar had also put their signatures on it as marginal witnesses. He also proved the will.

10. Both PW-1 and PW-2 were cross-examined at length but they remained firm in their deposition.

11. The plaintiff, of course, examined himself and fully supported his case.

12. On the other hand, on behalf of the defence, the daughter of Amar Nath was examined as DW-1. She indeed stated before the court that his father never executed any will in respect of the suit property during his life time. She also said that the will set up by the plaintiff was forged and fictitious and it was not executed by his father. She also said that it did not bear the signature of his father and his father Amar Nath was in Delhi on August 20, 1987. Beyond this no steps were taken to show to the court that the signature on the will dated August 20, 1987 was not of Amar Nath. In regard to possession, in her examination-in-chief she said that she and her mother were in symbolic possession as owners of the suit land which was cultivated by the plaintiff. In cross examination she plainly admitted that Durga Dass was in cultivating possession of the suit land since before the death of his father.

13. On a careful examination of the materials on record, the trial court accepted the plaintiff's case and decreed the suit. The defendants took the matter in appeal. The Appellate Court allowed the appeal, reversed the decree of the trial court and dismissed the plaintiff's suit. The Appellate Court took the view that the will relied upon by the plaintiff was shrouded in suspicious circumstances. It was executed in Nadala though the testator lived in Delhi. It was written by someone who was not a professional scribe though professional scribes were easily available in Nadala. It was left unregistered even though the registration office was at a very short distance from Nadala and Durga Dass being an educated person would fully know the value and importance of registration of a document and most importantly he had no reason to disinherit his wife and daughter.

14. The plaintiff after losing in the First Appellate Court took the matter in Second Appeal before the High Court. The High Court framed the questions arising in the second appeal and proceeded to examine them on the basis of the materials on record and the relevant case law.

The High Court returned the finding and came to hold that the circumstances cited by the lower appellate court to hold that the will was suspicious and the plaintiff had failed to dispel the suspicion were quite unfounded.

15. We have carefully gone through the order passed by the High Court and we are unable to see any infirmity therein so as to warrant any interference by this court under Article 136 of the Constitution.

16. However, in fairness to Mr.S.K.Bagga, learned senior counsel appearing on behalf of the appellants, it needs to be noted that he canvassed the case of the appellants-defendants very strongly. He relied upon each of the circumstances alluded by the first appellate court for holding that the will dated August 20, 1987 was suspicious and unreliable. Apart from that he also invited our attention to another registered will executed by Amar Nath on March 22, 1988 (Amar Nath died on March 26, 1988). Mr.Bagga submitted that in the registered will dated August 20, 1987 he bequeathed one shop which was allotted to him by the Ministry of Rehabilitation to one of his nephews but left other properties to his wife and daughter. In this will, he specifically bequeathed his 1/4th share in the land of Nadala to his daughter Santosh Kumari and expressly excluded his nephews from any share in that land. This deed has been produced for the first time before this Court and, therefore, we are not inclined to look into it.

17. The decision of the High Court on the materials before it warrants no interference. We find no merit in the appeal. It is accordingly dismissed.