

# **SUPREME COURT OF INDIA**

Ved Mitra Verma

Vs.

Dharam Deo Verma

C.A.No.153 of 2009

(Ranjan Gogoi and Sharad Arvind Bobde JJ.)

31.07.2014

## **ORDER**

1. Aggrieved by the judgment and order of reversal passed by the Gauhati High Court at Guwahati, Shillong Bench, this appeal has been filed. The Respondent-Dharam Deo Verma had filed an application in the Court of Additional Deputy Commissioner at Shillong Under Section 276 of the Indian Succession Act, 1925 (for short "the Act") for grant of Letters of Administration in respect of a Will dated 20th November, 1974, claimed to have been executed by his father late Satyanand Verma. The learned trial Court rejected the application holding the circumstances surrounding the execution of the Will to be suspicious. In Appeal, the High Court reversed the said verdict by an elaborate judgment.

2. The correctness of the view taken by the High Court has been sought to be assailed by contending that the reversal of the verdict of the learned trial Court overlooks a series of suspicious circumstances which, it is contended, ought to have been taken into account to hold that execution of the Will by the Testator in favour of the present Respondent has not been proved.

3. The suspicious circumstances, according to the Appellant, may be enumerated in seriatim herein under:

(i) That the Will dated 20th November, 1974 excludes all other children of the Testator to the exception of the beneficiary thereof i.e. the Respondent herein. No basis therefor is disclosed.

(ii) In the will, the name of the daughter Vidyalakshmi Devi having been wrongly mentioned as Piplakshmi Devi. This is a glaring fact which raises serious doubts as regards the authenticity of the Will.

(iii) That the Testator Satyanand Verma, was at the relevant point of time, suffering from ill-health which incapacitated him from executing the Will;

(iv) That the application before the learned trial Court under the provisions of the Act was filed after nearly 17 years of the execution of the Will; and lastly

(v) That the attesting witnesses have passed away in the meantime. The execution of the Will centers round the evidence of Shri Krishan Murari, Sub-Registrar, Jansath, Muzaffarnagar District (U.P.), PW-3, who had deposed on commission after nearly two decades of the execution of the Will throwing serious doubts on the credibility of the evidence tendered.

4. It is the submission of Mr. Rana Mukherjee, learned Counsel appearing for the Appellant that the aforesaid suspicious circumstances had rendered the execution of the Will highly suspect and, in addition, the execution thereof not having been proved as required Under Section 69 of the Indian Evidence Act, 1872, there is an apparent error in the conclusions recorded by the High Court in reversing the verdict of the learned trial Court.

5. The arguments made on behalf of the Appellant have been refuted by Shri Mahabir Singh, learned Senior Counsel appearing for the Respondent, who has submitted that the above circumstances, by themselves, does not render the execution of the Will suspect or unworthy of acceptance. Furthermore, it is submitted by the learned Counsel that all the aforesaid allegedly suspicious circumstances are capable of being reasonably explained on the basis of the materials on record. It is further submitted that Shri Krishan Murari, Sub-Registrar, Jansath, Muzaffarnagar District (U.P.), PW-3, in his deposition on commission has proved the execution of the Will by the attesting witnesses and the same being a registered document, the conclusions recorded by the High Court are perfectly justified and would not require any interference by this Court.

6. We have considered the rival submissions advanced on behalf of the parties.

7. The exclusion of the other children of the Testator and the execution of the Will for the sole benefit of one of the sons i.e. the Respondent, by itself, is not a suspicious circumstance. The property being self-acquired, it is the will of the Testator that has to prevail. Therefore, the question as to whether the Will is a genuine and acceptable document will depend on a consideration of the other circumstances surrounding its execution.

8. While there is an obvious error in the Will in the name of the daughter of the Testator, there are two significant aspects of the matter which cannot be overlooked. Firstly, the Will was written to the dictation of the Testator, and secondly, in the description of the name of the daughter, there is a reference to her husband's name which is correct i.e. Narayan Singh. The aforesaid two circumstances can reasonably explain the error in the name of the daughter as appearing in the Will and we are persuaded to hold that the said error is not material so as to invalidate the Will.

9. Insofar as the capacity of the Testator to execute the Will is concerned, though arguments have been advanced to show that on account of ill health the Testator was not in a position to realise and comprehend the consequences of his action, what cannot be overlooked is the fact that it is the admitted case of the Respondent herein that at the time of the execution of the Will, the Testator was in Jansath in U.P. in connection with the treatment of his eye-ailment. There is no material on record to hold that the Testator was suffering from any other kind of physical or mental infirmity which had rendered him incapable of taking a decision with regard to bequeathing of the properties by means of the Will in question.

10. It is not a fact that the Will and its contents had come to light for the first time after 17 years when the application was filed before the learned trial Court by the present Respondent. From the materials on record before the High Court, it is evident that there was a family dispute between the parties which was resolved by the local Durbar and the proceedings thereof were recorded in Ext. 10. In the said document, there is a reference to the "deed of agreement" made by the deceased father in 1974 on the basis of which the Appellant was found entitled to be in

possession of the property in question. The aforesaid "deed of agreement" is, in fact, the Will dated 20th November, 1974.

11. The attesting witnesses having died, the Sub-Registrar, who had registered the Will was examined as PW-3. He was examined on commission and in response to the questions posed to him, particularly, question No. 2, he had set out the circumstances in which the attesting witnesses as well as the Testator had signed on the document. This part of the evidence has been elaborately considered by the High Court to record its satisfaction that the execution of the Will has been proved on the basis of the evidence of the Sub-Registrar i.e. PW-3. Having considered the aforesaid aspect of the matter, we are of the view that the satisfaction recorded by the High Court does not suffer from any apparent infirmity or fundamental error which would require correction in the exercise of our jurisdiction Under Article 136 of the Constitution of India. All the alleged suspicious circumstances surrounding the execution of the Will being capable of being understood in the manner indicated above and the requirement of Section 69 of the Indian Evidence Act, 1872 having been satisfied by the evidence of PW-3, we find that in the present case, the findings and conclusions recorded by the High Court would not call for any interference. Consequently and for the reasons aforesaid, we dismiss the appeal leaving the parties to bear their own costs.