SUPREME COURT OF INDIA

Leela Rajagopal

Vs.

Kamala Menon Cocharan

C.A.No.9282 of 2010

(Ranjan Gogoi and R.K.Agrawal JJ.)

08.09.2014

JUDGMENT

RANJAN GOGOI, J.

1. All the three appeals being directed against the common judgment and order of the High Court dated 18.08.2009 were heard analogously and are being disposed of by this order.

2. In the present appeals, which challenge a judgment of reversal passed by a Division Bench of the High Court of Madras, determination of what is essentially a question of fact confronts this Court exercising its jurisdiction under Article 136 of the Constitution. The said question is with regard to the validity and legality of a Will dated 11.1.1982 executed by one K.P. Janaki Amma, the mother of the appellants and the first respondent. The learned Trial Judge by his order dated 23.01.2001 dismissed the probate proceedings instituted by the first respondent (later converted into a Suit being T.O.S. No. 16 of 1994) by holding that the execution of the Will dated 11.1.1982 is surrounded by a host of suspicious circumstances rendering the same legally unacceptable. The aforesaid view of the learned Trial Judge of the High Court having been overturned by the Division Bench of the High Court by impugned order dated 18.08.2009, the present appeals have been filed.

3. We have heard Mr. Krishnan Venugopal and Mr. Dhruv Mehta, learned senior

counsels as well as Mr. T. Harish Kumar learned counsel for the appellants and Mr. Vijay Hansaria, learned senior counsel appearing for respondent No. 1.

4. Testator Late Janaki Amma had initially executed a Will dated 28.12.1981 bequeathing house property bearing No. 8, Malony Road, T. Nagar, Madras-17 in favour of the first respondent Kamala Menon Cochran and her grand-daughter Geetha (daughter of her predeceased daughter Leela). The said Will, inter alia, contained a recital that the testator had 4 sons. In the Will dated 28.12.1981 the testator had acknowledged that her sons are all well settled in life and had properties purchased in their names during the life time of their father. The testator had further stated that she had suffered extreme bereavement on the death of her daughter Leela which occurred on 02.02.1975 and therefore out of the deep attachment for her grand-daughter, Geetha, and also as her second daughter K.P. Kamala Menon i.e. respondent No. 1 aged 46 years who is a Principal in a College and a spinster she is bequeathing the house property in favour of her grand- daughter and her daughter to the exclusion of her sons. The said Will dated 28.12.1981 was superseded/revoked by a subsequent Will dated 11.1.1982 which contained similar recitals as in the first Will dated 28.12.1981 except for the fact that instead of 4 sons the testator mentioned that she had 5 living sons. After the death of Janaki Amma which occurred on 27.04.1991 the respondent No. 1 had instituted a probate proceedings which was later converted into a suit, as the Will was disputed by the sons of the deceased.

5. The appellants who were the defendants in the suit and respondents before the High Court had contested the legal validity of the Will dated 11.1.1982 by asserting that the same was not a valid instrument of conveyance executed on the free volition of the testator; rather it was dictated at the instance of the first respondent-daughter who had exercised undue influence and coercion on the testator. To substantiate the contentions advanced, the contesting defendants had led evidence to show that the Will was executed in circumstances which give rise to serious doubts, with regard to its voluntary execution by the testator.

6. The learned Trial Court on a consideration of the cases of the parties and the evidence and materials adduced took note of the following circumstances surrounding the execution of the Will :

(i) No specific reason was disclosed as to why the sons i.e. the present

appellants had been excluded from the Will;

(ii) At the time of execution of the Will the respondent No. 1 had come down from Tirupathi where she was working as a college teacher/Principal to Madras and was staying with the mother i.e. the testator;

(iii) Only a fortnight earlier to the execution of the Will i.e. on 10.12.1981 the testator had written a letter (Ex. P8) to one of her sons Thangamani (Predecessor-in-interest of appellants in C.A. No. 9282 of 2010) expressing her intention to partition the house property, which was the subject matter of Will, equally among all the children;

(iv) Non-production of the original copy of the Will;

(v) The discrepancy in the evidence of the witnesses of the plaintiff with regard to the place of execution of the Will; and

(vi) The prominent part played by the plaintiff (respondent No. 1 herein) in the registration of the Will.

These circumstances, according to the learned Trial Court, were suspicious enough to justify a conclusion that the Will ought not to be accepted as a valid instrument executed on the free will and volition of the testator.

7. In appeal, the High Court, on consideration of the grounds and reasons which had persuaded the learned Trial Court to take the above view, thought it proper to disagree with the same and reverse the consequential findings. It may be noticed, at this stage, that in its very elaborate order the High Court had gone into each of the circumstances mentioned above; the evidence in support thereof as adduced by the parties and the arguments advanced before reversing the findings of the learned Trial Court.

8. Learned counsels for the appellants, in all the three appeals before us, submitted that between 11.1.1982 i.e. alleged date of execution of the Will and 27.4.1991 i.e. date of death of the testator, the beneficiaries under the Will had not informed anybody about the existence of the Will which according to the learned counsel is unnatural. Pointing out the evidence with regard to the place of execution of the Will,

learned counsel have contended that there is an apparent inconsistency in this regard inasmuch as while in the verification submitted alongwith the probate petition as required under Sections 281 and 282 of the Indian Succession Act, 1925 PW-3 had claimed that the Will was executed in the house of the testator, in her evidence, PW-3, had stated that the same was executed in the office of the Sub-Registrar. However, PW-4, the Sub-Registrar who was examined did not categorically depose about the place where the Will was executed. Reference has been made by the learned counsels for the appellants to other suspicious circumstances, enumerated hereinabove, to contend that the same are sufficient and adequate to justify rejection of the Will in question. Specifically, it was argued that no explanation has been offered for non-production of the original Will and the High Court has accepted the story of loss of the Will on the mere statement of the first respondent. On the said basis it is contended that the first respondent, as the Plaintiff, could not have led secondary evidence in support of the Will in the absence of clear and convincing proof of the loss of the original Will. Bringing in a different set of attesting witnesses in place of the witnesses who had attested the execution of the first Will dated 28.12.1981; the non-examination of the attesting witness Seetha Padmanabhan and the examination of the second witness (PW-3) Jaya Lakshmi who was a colleague of the plaintiff are other circumstances which the learned counsel for the appellants contends to be highly suspicious. The absence of any evidence to show the lack of cordial relationship between the testator and her sons and the fact that defendant No. 4 i.e. one of the sons was actually looking after the mother has also been stressed upon to point out that there was no reason to exclude the sons under the Will. In fact, learned counsels for the appellants have pointed out that PW-2 and PW-3 had clearly and categorically stated that the relationship between the testator and her sons was good. It is further argued that the letter dated 10.12.1981 (Ex. P8) of the mother to one of the sons, properly read, indicates a very cordial relationship and the purport thereof has been thoroughly misinterpreted by the High Court to come to the impugned findings and conclusions. The lack of knowledge of English on the part of the testator has also been cited as another circumstance to justify its rejection. Reliance has been placed on behalf of the appellants on the decision of this Court in H. Venkatachala Iyengar Vs. B.N. Thimmajamma and Others[1] as well as on a more recent pronouncement in Bharpur Singh and Others Vs. Shamsher Singh[2] to contend that active participation of the first respondent in execution and registration of the Will ought to be viewed by us as raising serious doubts with regard to the voluntary execution of the Will by the testator. Two other decisions of this Court in Rani Pnrnima Debi and Another Vs.

Kumar Khagendra Narayan Deb and Another[3] and Apoline D™souza Vs. John D™souza[4] have also been placed to contend that the absence of any evidence to show that the Will was read over and explained to the testator, in view of her lack of knowledge of English, would be crucial for determination of the authenticity of the Will in question.

9. Opposing the arguments advanced on behalf of the appellants, Shri Vijay Hansaria, learned senior counsel appearing for respondent No. 1 has argued that the acceptance or rejection of the Will, in the ultimate analysis would depend on the satisfaction of the judicial conscience of the Court with regard to its due execution. Shri Hansaria has submitted that no single circumstance would be determinative of the question and it is the cumulative effect thereof which would be vital to the adjudication required to be made by the Court. The mere participation of the first respondent in the execution and registration of the Will; her presence in Madras at the time of execution of the Will will in no way affect the validity thereof, it is contended. Insofar as the discrepancy in the place of execution of the Will is concerned, Shri Hansaria has pointed out that the verification filed alongwith the application for probate was in the standard form prescribed by the Original Side Rules of the High Court of Judicature at Madras (Form No. 55 which mentions the place of execution as the House of .). Insofar as the loss of the original Will is concerned it is submitted that the same was in custody of the testator and was found to be missing only after her death. It is in these circumstances that the probate proceedings were instituted on the basis of the certified copy of the Will which is authorised under the provisions of the Indian Succession Act. Insofar as the issue with regard to knowledge of English of the testator is concerned, apart from pointing out the relevant part of the evidence of the witnesses to show that the testator could read and understand English, it is argued that PW-4 (Sub-Registrar) had deposed that in all cases of registration the testator is asked whether he/she is aware of the contents of the Will. Shri Hansaria has cited the decision of this Court in Pentakota Satyanarayana and Others Vs. Pentakota Seetharatnam and Others[5] to contend that mere active participation in the registration of the Will by itself would not be a vitiating factor. Reliance has also been placed on two decisions of this Court in Mahesh Kumar (Dead) by Lrs. Vs. Vinod Kumar and Others[6] and Ved Mitra Verma Vs. Dharam Deo Verma[7] to show that mere exclusion of the other heirs will not vitiate the disposition made by a Will.

10. A Will may have certain features and may have been executed in certain

circumstances which may appear to be somewhat unnatural. Such unusual features appearing in a Will or the unnatural circumstances surrounding its execution will definitely justify a close scrutiny before the same can be accepted. It is the overall assessment of the Court on the basis of such scrutiny; the cumulative effect of the unusual features and circumstances which would weigh with the Court in the determination required to be made by it. The judicial verdict, in the last resort, will be on the basis of a consideration of all the unusual features and suspicious circumstances put together and not on the impact of any single feature that may be found in a Will or a singular circumstance that may appear from the process leading to its execution or registration. This, is the essence of the repeated pronouncements made by this Court on the subject including the decisions referred to and relied upon before us.

11. In the present case, a close reading of the Will indicates its clear language, and its unambiguous purport and effect. The mind of the testator is clearly discernible and the reasons for exclusion of the sons is apparent from the Will itself. Insofar as the place of execution is concerned, the inconsistency appearing in the verification filed alongwith the application for probate by PW-3 and the oral evidence of the said witness tendered in Court is capable of being understood in the light of the fact that the verification is in a standard form (Form No. 55) prescribed by the Madras High Court on the Original Side, as already noticed. Besides, in the facts of the present case the participation of the first respondent in the execution and registration of the Will cannot be said to be a circumstance that would warrant an adverse conclusion. The conduct of the first respondent in summoning her friend (PW-3) to be an attesting witness and in taking the testator to the office of the Sub Registrar should, again, not warrant any adverse conclusion. It also cannot escape notice that the Will dated 11.1.1982 is identical with the contents of the earlier Will dated 28.12.1981. Insofar as the execution of the Will dated 28.12.1981 and its registration is concerned no active participation has been attributed to the first respondent. The change of the attesting witnesses and the non-examination of Seetha Padmanabhan who had attested the second Will dated 11.1.1982 has been sufficiently explained.

12. The lack of knowledge of English even if can be attributed to the testator would not fundamentally alter the situation inasmuch as before registration of the Will the contents thereof can be understood to have been explained to the testator or ascertained from her by the Sub Registrar, PW-4, who had deposed that such a

practice is normally adhered to. The non-production of the original Will and reliance on the certified copy thereof is a circumstance which has been reasonably explained by the first respondent (plaintiff). The original Will, after its execution on 11.1.1982, was in the custody of the testator and it is only on the day or her death i.e. 27.4.1991 that the first respondent (plaintiff) could find that the Will was missing from the envelope marked ˜KPP Will™. The stand of the plaintiff that the original Will was lost while in the custody of her mother and her knowledge of such loss on the day of her mother™s death cannot be disbelieved merely because no report in this regard was lodged before the police.

13. All the unusual and allegedly suspicious circumstances being capable of being understood in the manner indicated above, we cannot find any fault with the conclusions reached by the High Court while reversing the judgment of the learned Trial Court.

14. Before parting we would like to observe that the very fact that an appeal to this Court can be lodged only upon grant of special leave to appeal would indicate the highly circumscribed nature of the jurisdiction of this Court. In contrast to a statutory appeal, an appeal lodged upon grant of special leave pursuant to a provision of the Constitution would call for highly economic exercise of the power which though wide to strike at injustice wherever it occurs must display highly judicious application thereof. Determination of facts made by the High Court sitting as a first appellate court or even while concurring as a second appellate court would not be reopened unless the same give rise to questions of law that require a serious debate or discloses wholly unacceptable conclusions of fact which plainly demonstrate a travesty of justice. Appreciation or re-appreciation of evidence must come to a halt at some stage of the judicial proceedings and cannot percolate to the constitutional court exercising jurisdiction under Article 136.

15. We, accordingly, dismiss these appeals affirm the order dated 18.08.2009 passed by the Division Bench of the High Court in Original Side Appeal No. 185 of 2001. However, in the facts and circumstances of the case, we make no order as to cost.

[1] 1959 Supp (1) SCR 426
[2] 2009(3) SCC 687
[3] (1962) 3 SCR 195

[4] 2007 (7) SCC 225
[5] 2005 (8) SCC 67
[6] 2012 (4) SCC 387
[7] 2014 (9) SCALE 219