

RAJASTHAN HIGH COURT

Ashok Kumar

Vs.

Hemraj

S.B. Civil Misc. Appeal No. 558 of 1995
(Prakash Tatia, J.)

27.07.2001

JUDGMENT

Prakash Tatia, J.

1. The appellants filed this appeal challenging the judgment dated 4th Nov., 1995 delivered in Civil Misc. Case No. 27/91 by the District Judge, Balotra.
2. The facts of the case are that applicants-respondents submitted an application under Section 372 of the Indian Succession Act for getting succession certificate for the properties of deceased Gangaram S/o Lakhmi Chand, who died at Barmer on 3rd December, 1990. According to respondent- applicants Gangaram died on 3rd December, 1990 and Gangaram's wife died prior to Gangaram and there is no issue of deceased Gangaram and his wife, Applicants are sons of real sister of deceased Gangaram. The month of applicants who was sister of deceased also died before Gangaram and, therefore, according to claimants they are the only successors to the property left by deceased Gangaram.
3. The non-applicants-appellants filed reply to the application under Section 372 and also submitted an application for grant of probate in the form of Counter claim before the trial Court alleging that Gangaram had no wife or children leaving at the time of death of Gangaram and, thereafter, Gangaram's wife died even prior to death of Gangaram. It is also submitted by the appellants that Parvati the mother of the respondents, who were the applicants before the trial Court for grant of succession, was the real sister of deceased Gangaram but she died about 54-55 years ago. The appellants submitted that appellants were looking after deceased Gangaram and, because of some complaint, escheat proceedings were initiated in which possession of

the properties was taken by the Tehsildar, Barmer from the appellant.

4. The appellants submitted that on 3rd July, 1987 deceased Gangaram executed a Will in favour of the appellants. The Will was lying with one Sh. Mohan Lal and appellants were not aware of the fact of the Will. The appellants came to know about the fact of Will only after six months of the death of Gangaram when one photostat copy of the Will was given by Mohan Lal to the appellants. According to appellants the Will dated 3rd July, 1987 is the last Will of deceased Gangaram and, therefore, they are entitled for probate for the Will dated 3rd July, 1987 and the applicants-respondents are not entitled for getting the succession certificate.

5. The reply to the counter claim was filed by the respondents and denied the facts as alleged by the appellants and also denied the execution of the Will by deceased Gangaram. The respondents also pleaded that due to the reasons mentioned in the reply to counter claim it is clear that the Will is suspicious and it could not have been in existence. It is also alleged that after the death of Gangaram the Government took possession of the property, prepared the site inspection report and also recorded the statement of Ashok and Ramesh the appellants and they did not produce any proof in their favour nor they disclosed the Will. It is also submitted that in this case, which was filed on 1st April, 1991 a public notice was published in a newspaper on 11th April, 1991 but no objections were filed by the appellants and, thereafter, after taking time for about one year, they came with this Will.

6. The circumstances given in the Will were also pleaded by the respondents and it is submitted that there are sufficient reasons to held that Will is forged documents one. It was also stated in the reply to the counter claim that the subscriber of the Will Mohan Lal is not resident of Barmer. He had no source of income and even the attesting witness Parmanand is the real brother-in-law of one of the appellants and other witnesses are heavily interested. The respondents further submitted that Gangaram himself in his service record shown the respondents as nominees.

7. The trial Court, therefore, framed the issues whether deceased Gangaram executed Will dated 3rd July, 1987 by his free will and whether the respondents are entitled for the grant of succession certificate. In the trial Court witnesses were produced by both the parties and the trial Court vide impugned order dated 11th Nov., 1995 held that the Will has not been proved in view of the fact that there are suspicious circumstances

and there are inherent improbabilities. Therefore, the Will was not accepted by the Court below. Consequently, the application for grant of succession certificate in favour of the respondents was allowed and the probate on the Will dated 3rd July, 1987 was refused.

8. Learned counsel for the appellants vehemently submitted that when there is direct evidence of the execution of the Will and the respondents failed to dis-prove the execution of the Will, the Court should have granted the probate on the Will. According to learned counsel for the appellants, the respondents were living far away from the Barmer at Surat and Bombay, Respondents' mother who was real sister of the deceased Gangaram died about 54-55 years ago. The respondents were never visiting to the Barmer and they were not taking care of the deceased whereas the appellants were taking care of the deceased Gangaram and they are also related to Gangaram, though distantly. Therefore, there are reasons for execution of the Will in favour of the appellants. It is submitted by learned counsel for the appellants that the respondents could have rebutted the evidence of the appellants by getting the opinion from the hand-writing expert with respect to the signature. When witnesses, in whose presence the Will was executed and Gangaram signed the Will, appeared before the Court and there is no reason to disbelieve the witnesses then it become more necessary for the respondents to prove that the Will was not executed by Gangaram.

9. Learned counsel for the appellants further submitted that the trial Court has not correctly appreciated the evidence of the witness and there are sufficient circumstances as submitted above for execution of the Will in favour of the appellants and there were reasons for not giving any property to the respondents. Learned counsel for the appellants further submitted that one of the attesting witness Anandilal was the real brother-in-law of the deceased Gangaram and not only this but subscriber Mohanlal is an independent person as no enmity has been shown by the respondents with Mohanlal and Anandilal. Witness Parmanand DW-3 is also attesting witness to the Will and was brother-in-law of appellants No. 1 and 3, therefore, his presence in all circumstances is probable. It is also submitted by the learned counsel for the appellants that appellant Ramesh Kumar NAW-1 categorically stated that not only the appellants were looking after the deceased Gangaram but appellants' mother was also living with Gangaram. It is also submitted that even on the 12th day of funeral, expenses were incurred by the appellants for which they have placed on record the bills as Ex.A5 to A15. Learned counsel for the appellants submitted that merely on the

ground of some discrepancies it cannot be held that Will was not executed in favour of appellants by deceased Gangaram.

10. Learned counsel for the respondents vehemently submitted that not only on the ground given in the judgment of the trial Court but also in view of the various other facts, it is clear that Will set-up by the appellants cannot be accepted as a Will executed by the deceased Gangaram. According to learned counsel for the respondents the facts, which came on record show that the Will was prepared afterwards. According to learned counsel for the respondents the circumstances clearly show that Will was not in existence and, therefore, it was set-up in defence of the application of the respondents for getting succession certificate.

11. I perused the record. The point in controversy between the parties is with respect to the Will dated 3rd July, 1987. If it is held that Will was duly executed by deceased Gangaram on 3rd July, 1987 in favour of the appellants then naturally, appellants are entitled for grant of probate and in case they failed, natural consequences will follow for grant of succession certificate in favour of the respondent, as done by the trial Court.

12. In view of the above, it is clear that controversy centers around the Will only. Therefore, I have to see the circumstances in which Will was executed. The Will alleged to have been executed on 3rd July, 1987, which is exhibited as A-1. This Will was set-up only in the year 1992 when the appellants filed their counter claim on 3rd April, 1992. According to counter claim itself, the appellants in whose favour alleged Will was, were not aware of the Will till it was brought to their notice by one Mohan Lal, which was after six months of the death of Gangaram deceased. It is admitted case by the appellants that escheat proceedings were initiated by the District Collector, Barmer on the complaint of one Daulal whereupon escheat case was registered in the year 1990 and according to learned counsel for the appellants it was initiated on 17th December, 1990. The possession of the house was taken from the appellants on 8th January, 1991 by the Tehsildar and it is an admitted case that the appellants did not submitted that there is a Will in their favour. It appears that they readily lost their possession of the property of Gangaram but they did not chose to submit that they had any right, title or interest because of any Will in their favour the appellants even did not chose to initiate any proceedings in accordance with law for getting probate over the Will till 3rd April, 1992, i.e., about one year & four months after the death of

Gangaram, that too, in counter claim of the respondents for getting succession certificate for the property of Gangaram. Thus, the submissions of the learned counsel for the appellants are that when appellants were not aware of the Will they could not have produced that Will and could not have been protest the escheat proceedings by saying that they were having any Will in their favour. It is mentioned in the counter claim itself that the appellants came to know about the Will only when it was shown by Mohan Lal, that too, six months after the death of Gangaram. This fact come in the notice in June, 1991 only, but even then they did not try to obtain the possession of the property nor they initiated any proceedings for getting probate for the Will.

13. To examine whether the facts given by the appellants that they came to know about the Will only after six months of the death of Gangaram we may examine the evidence of the appellants.

14. NAW-1 Ramesh Kumar, one of the appellants stated before the trial Court that they are legal successors of the deceased Gangaram and Mohan Lal gave a Will of Gangaram after six months of death of Gangaram. In cross-examination appellant Ramesh Kumar stated that he received notice from the Office of the District Collector, Barmer on 19th January, 1991 but till then he had no knowledge of the Will, therefore, they did not chose to file any submission for their claim. It is also admitted in statement that in escheat proceedings evidence of the appellants were recorded but in those statements also they have not mentioned the fact of the Will. Not only this but they specifically submitted in escheat proceedings that the appellants have no proof of being successors of deceased Gangaram.

15. DW-3 Parmanand witness of the appellants who was none else than the real brother-in-law of appellants Ramesh Kumar and Ashok Kumar. In his cross-examination, he stated on oath that after the execution of the alleged Will, just after two months, he met with appellants Ramesh Kumar and Ashok Kumar and told them that Gangaram has executed Will in favour of the appellants. Again I may repeat that Will was executed on 3rd May, 1987 and as per the statement of Parmanand the Will was brought to the notice of the appellants just 2 months after the date of the alleged Will. Therefore, the statement of the appellants before the trial Court stand contradicted on material fact by his own witness DW-3 Parmanand. Hence, it cannot be believed that if there was a Will in existence and was executed on 3rd July, 1987, it was not in knowledge of the appellants. If there was Will in existence on 3rd July,

1987 and the attesting witness is none else than the real brother-in-law of the appellants Ramesh Kumar and Ashok Kumar, there was no reason for Parmanand for not disclosing the fact of the Will in favour of the appellants and this fact was kept hidden by Parmanand. It is strange and absolutely unbelievable that the appellants will be dispossessed by the State Government from the house and appellants Ramesh Kumar and Ashok Kumar's brother-in-law will not come forward to protect their property by bringing in notice the fact of the Will to the notice of the State authorities. It is also impossible to believe if the statement of Parmanand is accepted that despite the knowledge of the Will in the month of September, 1987 to the appellants, they will readily lose the possession of the immovable property. The statements of Parmanand and Ramesh Kumar are so contradictory in material fact that their statements cannot be relied for any purpose with respect to the alleged Will.

16. When faced with this situation, learned counsel for the appellant tried to explain that even if there was knowledge of the Will as stated by Parmanand DW-3 to the appellants then since they were not having the copy of the Will, therefore, they could not submit any objection before the Tehsildar, Barmer in escheat proceedings. The submission is, on the face of it, so hollow and it deserves to be rejected summarily. To protect immovable property, the owner will not wait for getting the copy of the document for a long period and he will immediately try to submit that he is owner of the property by virtue of the Will and he may make prayer for time for filing copy of the Will after obtaining it from the person who is having the Will or even if he has no knowledge in whose possession Will is, then he may even seek time to place on record the Will after searching it from the persons in whose possession the Will could have. The execution of the Will was, as alleged, in the knowledge of the brother-in-law of appellants Ramesh Kumar and Ashok Kumar and, therefore, finding out the Will was not difficult for them. It is pertinent to mention here that it has not been pleaded by the appellants that when brother-in-law Ramesh Kumar and Ashok Kumar were the attesting witnesses then why they did not contract Parmanand for getting the Will immediately when escheat proceedings were initiated. There is no fact pleaded that why Parmanand remained silent and silently watched the dispossession of the appellants from the property. There are no facts mentioned by the appellants that whether there was any talk with Parmanand with respect to the Will or not. It is also virtually admitted case by the appellants that Gangaram never disclosed the fact of execution of the Will in favour of the appellants and none of the fact has been pleaded that what was the reason for not disclosing the fact of execution of the Will by

Gangaram. Therefore, these are sufficient grounds for holding that Will was not even in existence on the date as alleged by the appellants.

17. The trial Court very carefully and critically considered the evidence of the parties and recorded the various reasons for holding that circumstances are so suspicious and it cannot be accepted that valid Will was exhibited. It is further relevant to mention here that the witness Anandilal is brother-in-law of Gangaram (Gangaram's wife's brother). He is also said to be attesting witness of the Will. He stated in his cross-examination that he met with Ramesh Kumar-appellant after one and half year of the execution of the Will but he did not mention it to the appellants. When the appellants were taking care of the deceased Gangaram, appellants' mother was alleged to have been living with deceased Gangaram and it is also alleged that meals were sent by the appellants to Gangaram for years then what was the reason for Anandilal brother-in-law of Gangaram, for not disclosing this fact to the appellants, has not been explained by the appellants or Anandilal. Therefore, a Will, which was alleged to have been executed as back as on 3rd July, 1987 was not brought to the daylight till 3rd April, 1992, itself is a sufficient circumstance to make the circumstances suspicious but when such important document if was in existence and was not put forward to protect the property itself it means highly suspicious and when the closest relations fail to explain the circumstances in which the Will was kept secretly and was not shown to anybody including the beneficiaries, the circumstances go more worse against the appellants. In addition to above, there is no explanation for not mentioning the fact of the execution of the Will by the deceased Gangaram to the appellants.

18. Events did not end here. The subscribe is Mohan Lal who is residing 46 Kms. which is equivalent to 90 Kms. away from the Barmer. He is said to be living as 'Sadhu' and it is alleged that Mohan Lal came at Barmer and stayed at one 'Math' and then it is alleged that Gangaram went to the 'Math' to call Mohan Lal for getting the Will written by Mohan Lal. Why he has chosen him, is also not clear ? The only reason given by Mohan Lal is that he was a good friend of Gangaram and even NAW-1 said so. Anyway no reason has been shown why the Will was kept with Mohan Lal, who was living as 'Sadhu' not at Barmer, when there were two important attesting witnesses one is Parmanand who was the brother-in-law of appellant Ramesh Kumar and Ashok Kumar and another is Anandilal who was the real brother-in-law of deceased Gangaram. Witness Parmanand stated in cross-examination that he is not aware how the appellants got the Will but subsequently he came to know that Will was

lying with Mohan Lal. This statement shows that even Parmanand was not aware that the Will was with Mohan Lal, therefore, getting the Will written by itself is suspicious.

19. Now, took at the Will Ex.A-2, which shows that word (*Shri*) has been affixed alongwith the name of deceased Gangaram in the Will Ex.A-I at the start and that is also shown in the last three lines of the Will. Normally a person giving dictation for execution of a document for himself will not used word (*Shri*) for himself but here in this case the word (*Shri*) has been used for alleged author of the Will but very pertinent fact is also that the word (*Shri*) has not been used for the scribe. This fact itself may not be very much important but the other facts with respect to Will are that on the first page of the Will there is no signature of deceased Gangaram whereas scribe Mohan Lal has put his signature on the first page of the Will. The entire writing of the Will is in black ink including the signature of Mohan Lal, the alleged scribe, whereas signature of Gangaram is in different ink with different pen, whereas the pen and ink used by witness Parmanand is in different ink and also pen and ink of the attesting witness Anandilal is in different ink. Subscriber Mohan Lal, in his cross-examination, stated that the Will was written on the paper, which was given by Gangaram deceased and he also provided holder & ink, which was black and from holder of Gangaram Will was written. If it was so, then it cannot be believed that Gangaram will not use his own holder & ink for the purpose of signing and some-one else will provide a ball pen to Gangaram for signing the Will and if it was provided by some-one else then it is unbelievable that he himself who provided the pen to Gangaram will not use that pen for putting his own signature and the text of the attestation not tallies with the inks used by the attesting witnesses and, therefore, circumstances of using holder & ink of Gangaram by Mohan Lal and using a different pen by Gangaram and all other witnesses is also material circumstance in the facts of this case causing serious doubt.

20. It is stated that three lines at the bottom are written in such a congested way and there is no explanation for that, which according to learned counsel for the appellant was inserted subsequently to put emphasis that the Will was executed by Gangaram. The evidence of attesting witnesses Parmanands and Anandilal is also of not worth reliance in view of all the circumstances including the relations between the appellants and their non-disclosure of the fact of execution of Will for such a long period mum even at the time of loss of possession of the property by the appellants and because of the fact of non-disclosure of any reason for not giving information of the execution of

the Will to the appellants, which was executed on 3rd April, 1987 are more than sufficient circumstances to hold that will dated 3.7.87 is not a Will created by deceased Gangaram.

21. In addition to above substantial circumstances, there is one fact more that in the entire Will there is no mention of sister of Gangaram though she died long ago but her sons and daughter were very much alive and their relation with Gangaram was not proved to be bad. Even NAW-1 Ramesh Kumar appellant himself admitted that respondent Radhakishan was present on the 12th day of the death of Gangaram. Therefore, in the above circumstances, when there is no mention of nearest relations who are the natural successors in the Will and there is no reason mentioned in the Will for their exclusion from the property then also the circumstances go against the execution of the Will.

22. The statement of appellant Ramesh Kumar is also appears to be false. Ramesh Kumar stated that his mother lived for 3-4 years with deceased Gangaram and also stated that at that time they were regularly sending meals to Gangaram and Lilavati who is wife of the deceased Gangaram. If at the time of living of Gangaram the meals were sent by the appellants to Gangaram, what was the reason for doing so, has not been given as Lilavati, admittedly, died in the year 1966. Therefore, living of mother of the appellants with Gangaram and Lilavati for 3-4 years and sending meals by the appellants to Gangaram and Lilavati, on the face of it, is false statement as there is a difference of about 24 years in the date of death of Gangaram and Lilavati.

23. Learned counsel for the respondents relied upon the judgment of the Hon'ble Apex Court delivered in *Gurdial Kaur & Ors. v. Kartar Kaur & Ors.*¹. The Hon'ble Apex Court held as under :

"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 the understanding the contents of the Will. Therefore, whenever there is any suspicious circumstance, the obligation is cast on the propounder of the Will to dispel the suspicious circumstances."

24. In view of the above decision of the Hon'ble Apex Court and in view of the facts of this case, it is a clear case of voluminous suspicious circumstances, which are sufficient to hold that Will was not executed as alleged by the appellants and not only circumstances are suspicious but by the evidence of the appellants and appellants' witnesses the suspicion of circumstances became more and more grave.

25. Therefore, there is no illegality committed by the trial Court in granting succession certificate in favour of the respondents rejecting the probate application of the appellants. Hence, the appeal of the appellant is dismissed with costs.

Appeal dismissed.

Cases Referred.

1.1998(2) R.C.R.(Civil) 390 : (1998(4) SCC 384)