

## RAJASTHAN HIGH COURT

Praveen Kumar

Vs.

Shyam Dass

D.B. Special Civil Appeal No. 21 of 1995  
(V.K. Bali and Ajay Rastogi, J.)

30.08.2005

### JUDGMENT

**V.K. Bali, J.**

1. Ayodhya Bai, who was not blessed with any child and at the relevant time when she executed Will dated 6.9.1969 bequeathing all her properties to Geeta Press, had lost her husband as well. She did adopt Praveen Kumar son of her husband's brother Gopi Kishan but, as mentioned above, preferred that all her properties should go to Geeta Press, thus debarring her adoptive son to inherit the said properties by way of natural succession. Ayodhya Bai breathed her last on 14.4.1970 and on her demise, the executors of the will named above made an application under Section 276 of the Indian Succession Act for grant of a probate with regard to the Will said to have been executed by Ayodhya Bai on 6.9.1969. The matter was contested by the adoptive son of Ayodhya Bai namely Praveen Kumar and Gopi Kishan, natural father of Praveen Kumar. Learned Distt. Judge, Ajmer, vide orders dated 22.12.1978 dismissed application of the executors. Aggrieved, the executors of the Will filed an appeal before this Court which has since been allowed by order dated 29.11.1994. It is against this order of the learned Single Judge that the present special appeal has been filed under Section 18 of the Rajasthan High Court Ordinance, 1949.

2. Brief facts of the case reveal that out of the three brothers namely Bal Kishan, Ram Kishan and Gopi Kishan, Bal Kishan died at an early age leaving behind his widow Ayodhya Bai. The couple was not blessed with any child. In 1964, Ayodhya Bai adopted Praveen Kumar son of her husband's brother Gopi Kishan. Ayodhya Bai was concededly a religious lady and was staying at Pushkar, Ajmer and Indore whereas her adoptive son was staying at Ajmer. Shyam Das, respondent No. 1 brother of Ayodhya

Bai was residing at Indore. Ayodhya Bai breathed her last on 14.4.1970 at Pushkar at the age of 60 years. It is again conceded position that at the time when Ayodhya Bai died, none of her relations were by her side but her last rites were indeed performed by Praveen Kumar, her adoptive son. It was on 13th day of the death of Ayodhya Bai that a list of articles was prepared which were found in the house of Ayodhya Bai at Pushkar. Three copies of the Will dated 27.3.1969 and three copies of Will dated 6.9.1969 were also found from the place where Ayodhya Bai was residing at Pushkar, besides some other articles. It is Will dated 6.9.1969 with regard to which the executors sought probate. The Will dated 6.9.1969 *inter alia* narrates that there had been partition and one Kothi at Madar Ka Naka, Ajmer and one house Nohra Choti Basti, Pushkar had fallen to her share while one shop in Nala Bazar, Ajmer, one Haveli at Ajmer and open plots at Ajmer were her 'Stridhan' and that she had bequeathed all her properties along with the movable and cash to Geeta Press and had also appointed two executors of the Will namely her brother Shyam Das and one Dhan Singh. It had also been mentioned in the Will that the properties may be given to Geeta Press or it may be used for any other religious or social purposes as may be decided by the executors.

3. The objectors Praveen Kumar and his natural father contested the Will by primarily pleading that it was not a genuine document and Shyam Das had made an attempt to gain dishonest and unfair advantage in the matter. Respective pleadings of the parties gave rise to only one relevant issue pertaining to the Will dated 6.9.1969 having been executed by Ayodhya Bai. The other issue was only as to what relief was to be granted in the case.

4. There is no need at all to give details of evidence led by the parties at this stage of second appeal. The same in any case has been given in all its details by the learned Distt. Judge and the learned Single Judge who decided appeal arising from the judgment passed by the learned Distt. Judge. It is, however, significant to mention that execution of the Will was proved in the manner prescribed by law as the same was held to be duly executed, by the learned Distt. Judge, Ajmer. The Will was invalidated, however, on the sole ground that the same was surrounded by suspicious circumstances. Learned Single Judge, however, reversed the aforesaid finding of the learned Distt. Judge by holding that the alleged circumstances were not suspicious at all. The only question in the context of the facts as fully detailed above, would be as to whether the circumstances pressed into service by the appellants before this Court were suspicious enough to discard the Will. Before we may, however, take this

exercise in hand, it would be relevant to mention that Ayodhya Bai even though deprived her adoptive son to succeed to her estate by bequeathing all her properties to Geeta Press or any other religious or social organization that may be deemed appropriate by the executors of the Will, she did not bequeath her properties to the executors or any individual. What is further required to be mentioned is that Praveen Kumar even though stated in his examination-in-chief that he was residing at Ajmer but was visiting her adoptive mother Ayodhya Bai at Pushkar, under the stress of cross-examination had to admit that ever since his marriage on 7.3.1969 he had not visited her mother at Pushkar. It is thus clear that for a period of at least six months when the Will was executed on 6.9.1969 or even up to the time when the old lady died on 14.4.1970 he had not visited her adoptive mother. Learned Single Judge while dealing with the suspicious circumstances said to be surrounding the Will, observed as under:-

"In this case the appellants are merely executors of the will and they are not legatees. Had they been the legatees in the Will, the situation would have been different. Here the legatee is Geeta Press, Gorakhpur. Hence, the circumstances that the will was executed at Indore at the house of appellant No. 1, where the testatrix was not residing permanently would not become a suspicious circumstance so as to cast doubt upon the evidence led about the execution of the will. Why the testatrix chose to give all her property to Geeta Press is not also a fact far to understand. She was a woman of religious mind. She preferred to stay at Pushkar, which is a religious place. She had religious books and naturally she must be reading them. Her own son stated that she knew the Ramayan by heart. Geeta Press, Gorakhpur prints religious books and for a person of religious mind to be attracted towards such a press so as to give away all her property to this press would not amount to a suspicious circumstance. She could have given her property to any institution in Pushkar but if she decided to give the property to Geeta Press, Gorakhpur in preference to the institution at Pushkar, the will would not become a forged document."

5. The circumstance, that the will was made known to the others only on the 13th day of the date of death of Ayodhya Bai, has also been considered to be a suspicious circumstance. However, it only discloses that the appellants did not want to raise disputes about the property soon after the death of Ayodhya Bai and have waited till the copies of the will were found amongst the papers of the deceased. When the list

Ex.A.2 discloses that copies of two wills, three copies of each were recovered from the papers, then there is no reason to believe that these copies were not found amongst her papers but were supplied by the appellants and they forged the entry in the list Ex.A.2. Even earlier will dated 27th March, 1969 has not been produced. Had it been produced it would have shown as to why it became necessary for Ayodhya Bai to execute another will. It would also go to show whether that will was used as a draft for preparing subsequent will by making adequate changes. If the respondent No. 1 was the beneficiary under this earlier will there was no reason for him to withhold the same. Moreover, it was for the respondents to show that there was partition in which the property bequeathed came to the share of Ayodhya Bai. If she was not having the ownership rights over this property then the respondent could have stated as to who was/were the owners. DW-1 Praveen Kumar has not even denied the fact of partition of the property. In the present case, the appellants have been named as executors and they are not directly involved with the family of the deceased and the respondents. Hence, it was for the respondents to give the details about the property of the late husband of Ayodhya Bai and the manner in which it came to the share of the family members.

6. No doubt the attesting witnesses to the will are relatives of the appellant No. 1 and are of young age but that by itself would not become a suspicious circumstance. Why should old people be made attesting witnesses to a will and who knows they will not be able for giving evidence when the question of proving the will arises. Again as to where the will was typed would depend upon the wishes and convenience of the person getting it typed and when Arun Kumar has not been questioned as to why he got the will typed at a place about two miles away from the house, it would not become a suspicious circumstance which ought to have been explained by the witnesses without being questioned about it."

7. Despite impressive and convincing observations made by the learned Single Judge, in repelling the contentions of the respondent with regard to the alleged suspicious circumstances, it is still being vehemently urged by the learned counsel appearing for the appellant that the very fact that natural succession was dispelled would in itself be enough to discard the Will as in normal circumstances, no parents would deprive children to succeed to the properties owned by them. It has also been urged that Ayodhya Bai had gone to attend marriage of her niece at Indore and there was no occasion at that stage for her to have executed the Will and further that no draft of the

Will before the actual Will came to be executed was produced before the Court. It has further been urged that there was a plot owned by Ayodhya Bai, situated at Indore and that does not form part of the Will and further that no proof has at all been brought on record to show that the property subject matter of Will had fallen to the exclusive share of Ayodhya Bai as a result of partition between her and her husband's brothers.

8. We do not find any merit whatsoever in the contention of the learned counsel, as noted above. If the first contention of the learned counsel is to be accepted, then no Will can ever be held to be a genuine document as the Will, by and large, dispels natural succession. Even in a case where properties have been bequeathed by way of a Will to natural successors only, to some extent, there would be, by and large, variations in the shares of natural successors. There is no necessity at all to confer rights of property upon anyone by way of Will if owner of the property wants the same to go by way of natural succession only. In the present case, however, we need not delve further on this aspect of the case as there are adequate reasons available on the record to show as to why natural succession was dispelled. Ayodhya Bai concededly was a religious lady and was living at the religious place-Pushkar. It appears that after death of her husband, she devoted most of the time at Pushkar where she was also busy reading religious books. She was thus a highly religious lady. She had bequeathed her properties to a religious institution 'Geeta Press' which we all know is engaged in publishing religious book only. If the executors however be of the view that the properties are not to be given to Geeta Press, the same would in any case go to some other religious or social institution. Bequeathing property to a religious or social institution, considering the religious bent of mind of the testator, speaks volumes of the authenticity of the Will, thus providing a sound and plausible reason for dispelling natural succession. That apart, Praveen kumar was an adoptive son. It is but natural that love and affection that the parents would have for a natural born son is far more than that would be for an adopted son. Adoption is normally resorted to when a couple is deprived of natural born child. The bonds of blood relations between the parents of the child are far more stronger than relations that may be between the parents and adopted child. That apart, there is definite evidence on record to show that at least after marriage of Praveen Kumar, there was some strain between the relations of Ayodhya Bai and her adoptive son Praveen as otherwise there was no question for Praveen not to have visited his mother from the date of his marriage till she died and it may be mentioned here that Pushkar is only 15-20 Kms. away from Ajmer. As to why Ayodhya Bai had executed Will on 6.9.1969 when she had gone to attend marriage of

her niece, would be of no consequence and in any case, having lost faith in her adoptive son and at a time when she had decided to bequeath all her properties to Geeta Press, the place where her brother were residing, would have, in any case, been a far better place for her to execute the Will. Non-production of draft of the Will is wholly inconsequential and does not depict the same to be a suspicious circumstance. If the plot at Indore owned by Ayodhya Bai had not been included in the Will, appellant should thank his stars as the same would now go to Praveen Kumar in succession. It appears, however, to this Court that Ayodhya Bai had either omitted to mention plot located at Indore or may be, she wanted this plot to be succeeded by her adoptive son but non-inclusion of the plot situated at Indore cannot, by any stretch of imagination, be said to be a suspicious circumstance. Non-proof of partition of the properties subject matter of Will again does not appear to be a suspicious circumstance. That apart, if there was indeed no partition of the properties owned by Ayodhya Bai and her husband's brothers, as is the case of the appellant, they could have easily proved the same. They, however, chose not to lead any evidence.

9. In view of the facts as fully detailed above, we are of the considered view that the Will could not be ignored on the basis of so called suspicious circumstances and the learned Single Judge, in our view, rightly set aside the order passed by the learned Distt. Judge.

10. Before, we may however part with this order, we would like to mention that when a property is be quested by a Will to a religious or social organization and not to any individual, suspicious circumstances surrounding the Will, if any, may still be looked into but the same are normally and substantially dispelled by the mere fact that the property is not going to any individual but is going to a religious or social organization. Mr. Mehta, however, urged before us that the discretion has been left in the will for the executors to divert the property to some other religious or social institution and, therefore, the executors may not give it to Geeta Press and may appropriate the same to themselves. We need not comment anything on this contention but for to remind the appellant that in such a situation, law would not be silent and there would be separate appropriate remedy available to the appellant to seek the desired relief from an appropriate forum.

11. Having no merit in this appeal, we dismiss the same. In view of the fluctuating fate of parties, however, there shall be no order as to costs.

Appeal dismissed.