(1993) 10 P&H CK 0024

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 1547 of 1979

Lashkar Singh		APPELLANT
	Vs	
Bakhshish Kaur		RESPONDENT

Date of Decision: Oct. 12, 1993

Acts Referred:

- Succession Act, 1925 - Section 63

Citation: (1994) 2 ILR (P&H) 115

Hon'ble Judges: R.K. Nehru, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

R.K. Nehru, J.
Plaintiff Appellant Lashkar Singh has come up in this Regular second Appeal against the judgment and decree on the First Appellate Court, reversing in appeal, those of the trial Court, resulting in the dismissal of the suit.

2. Atma Singh was the owner of the suit land. Appellant Lashkar Singh is his son, Bakhshish Kaur Defendant Respondent Smt. Bhago is his widow. Atma Singh died on October 1, 1973. Lashkar Singh Appellant filed a suit for declaration to the effect that he was the owner of the suit land to the extent of 2/3rd share while Defendant Respondent Smt. Bhago was the owner to the extent of 1/3rd share, in the suit land on the basis of Will dated August 17,1973 (Copy EX. P1) executed by Atma Singh. It is averred by the Appellant that Bakhshish Kaur Respondent was excluded from inheritance but mutation of inheritance was wrongly sanctioned in her favour also to the extent of 1/3rd share in the suit land.

3. Defendant-respondent Smt. Bhago filed written statement admitting the claim of the Plaintiff.

4. Suit was, however, contested by Respondent Smt. Bakhshish Kaur, inter alia on the ground that her father Atma Singh had not executed any valid Will and mutation of inheritance was rightly sanctioned in her favour.

5. The parties were put to trial on the following issues:

(1) Whether Atma Singh deceased executed a valid Will in favour 6f the Plaintiff on 17.8.1973?

OPP

(2) Relief.

6. The learned trial Judge under issue No. 1 held that the Will in dispute was a valid document executed by Atma Singh and answered Issue No. 1 in favour of the Plaintiff, and against the contesting Defendant, and as a result thereof, decreed the suit in favour of the Appellant vide judgment and decree dated 12.12.1976.

7. Smt. Bakhshish Kaur Respondent, feling aggrieved against the judgment and decree of the trial Court, challenged the same in the First Appeal. The First Appellate Court, on the basis of the evidence on record, came to the conclusion that the Will in dispute was surrounded by suspicious circumstances, which the Plaintiff had failed to dispel. It reversed the finding of the trial Court on issue No. 1 by holding that the Will in question was not a validly executed document and by allowing the appeal, dismissed the suit of the Plaintiff vide judgment and decree dated 3.3.1979.

8. Dissatisfied with the judgment and decree of the First Appellate Court, the Plaintiff-Appellant has come up in Regular Second Appeal in this Court.

9. I have heard the learned Counsel for the parties and with their help scanned the evidence on record.

The only controversy which requires determination is whether the Will in dispute (Copy Ex.P-1) is or is not a validly executed instrument. In order to appreciate the above controversy, in a better perspective, it would be of advantage to refer to some of the judgments of the Apex Court laying down guidelines for appreciating the evidence in the matter of Wills.

The principles governing the mode of proving of a Will came up for consideration before the Apex Court in Rani Purnima Devi and Another Vs. Kumar Khagendra Narayan Dev and Another, and while dealing with this aspect, it was observed in para 5 of the judgment as under:

Before we consider the facts of this case, it is well to set out the principles which govern the proving of a Will. This was considered by this Court in H. Venkatachala Iyengar Vs. B.N. Thimmajamma and Others, . It was observed in that case that the mode of proving a Will did not ordinarily differ from that of proving any other document except as to the special requirement of attestation prescribed in the case

of a Will by Section 63 of the Indian Succession Act. The onus of proving the Will was on the propounder and in the absence of suspicious circumstances surrounding the execution of the Will proof of testamentary capacity and signature of the testator as required by law was sufficient to discharge the onus. Where, however, there were suspicious circumstances, the onus would be on the propounder to explain them to the satisfaction of the Court before the Will could be accepted as genuine. If the caveator alleged undue influence, fraud or coercion, the onus would be on him to prove the same. Even where there were no such pleas but the circumstances gave rise to doubts, it was for the propounder to satisfy the conscience of the Court. Further, what are suspicious circumstances was also considered in this case. The alleged signature of the testator might be very shaky and doubtful and evidence in support of the propounder''s case that the signature in question was the signature of the testator might not remove the doubt created by the appearance of the signature. The condition of the testator''s mind might appear to be very feeble and debilitated and evidence adduced might not succeed in removing the legitimate doubt as to the mental capacity of the testator, the dispositions made in the Will might appear to be unnatural improbable or unfair in the light of relevant circumstances; or the Will might otherwise indicate that the said dispositions might not be the result of the testator''s free Will and mind, In such cases, the Court would naturally expect that all legitimate suspicions should be completely removed before the document was accepted as the last Will of the testator. Further, a propounder himself might take a prominent part in the execution of the Will which conferred on him substantial benefits. If this was so it was generally treated as a suspicious circumstances attending the execution of the Will and the propounder was required to remove the doubts by clear and satisfactory evidence. But even where there were suspicious circumstances and the propounder succeeded in removing them, the Court would grant probate, though the Will might be unnatural and might cut off wholly or in part near relations.

In AIR 1964 Supreme Court 529 Shashi Kumar Banerjee v. Subhodh Kumar Banerjee since deceased and after him, his legal representatives, it has been observed as under:

The onus of proving the Will is on the propounder and in the absence of suspicious circumstances surrounding the execution of the Will, proof of testamentary capacity and the signature of the testator as required by law is sufficient to discharge the onus. Where however there are suspicious circumstances, the onus is on the propounder to explain them to the satisfaction of the court before the court accepts the Will as genuine. Where the caveator alleges undue influence, fraud and coercion, the onus is on him to prove the same. Even where there are no such pleas but the circumstances give rise to doubts, it is for the propounder to satisfy ,the conscience of the Court. The suspicious circumstances may be as to the genuineness of the signature of the testator, the condition of the testator''s mind, the dispositions made in the Will being unnatural, improbable or unfair in the light

of relevant circumstances or there might be other indications in the Will to show that the testator''s mind was not tree. In such a case the Court would naturally expect that all legitimate suspicion should be completely removed before the document is accepted as the last Will of the testator. If the propounder himself takes part in the execution of the Will which confers a substantial benefit on him, that is also a circumstance to be taken into account, and the propounder is required to remove the doubts by clear and satisfactory evidence. If the propounder succeeds in removing the suspicious circumstances the court would grant probate, even if the Will might be unnatural and might cut off wholly on in part near relations. It is in the light of these settled principles that we have to consider whether the Appellants have succeeded in establishing the Will duly executed and attested.

The Apex Court again, while dealing with the matter relating to suspicious circumstances, surrounding a Will in case reported as Gorantla Thataiah Vs. Thotakura Venkata Subbaiah and Others, observed in para 6 of the judgment as under:

It is well established that in a case in which a Will is prepared under circumstances which raise the suspicion of the Court that it does not express the mind of the testator it is for those who propound the Will to remove that suspicion. What are suspicious circumstances must be judged in the facts and circumstances of each particular case. If, however, the propounder takes a prominent part in the execution of the Will which confers substantial benefits on him that itself is a suspicious circumstance attending the execution of the Will and in appreciating the evidence in such a case, the court should proceed in a vigilant and cautious manner. It is observed in Villiams on "Executors and Administrators" Vol. 1,13th, Ed. P.92:

Although the rule of Roman Law that ''Qui se scripsit haeredem'' could take no benefit under a Will does not prevail in the law of England, yet, where the person who prepares the instrument, or conducts its execution, is himself benefited by its dispositions, that is a circumstance which ought generally to excite the suspicion of the Court and calls on it to be vigilant and zealous in examining the evidence in support of the instrument in favour of which it ought not to pronounce, unless the suspicion is removed, and it is judicially satisfied that the paper does not express the true Will of the deceased.

According to the decision in Fulton v. Andrew (1875) 7 HL 448, "those who takes a benefit under a Will, and have been instrumental in preparing or obtaining it, have thrown upon them the onus of showing the righteousness of the transaction." "There is however no unyielding rule of law (especially where the ingredient of fraud enters into the case) that, when it has been proved that a testator, competent in mind, has been proved that a testator, competent in mind, has had a Will read over to him, and has thereupon executed it, all further enquiry is shut out". In this case, the Lord Chancellor, known observations, of Baron Parke in the case of Barry v. Butlin (1838) 2 Moo PC 480 at p. 482. The two rules of law set out by Baron Parke

are:

First, that the onus probandi lies in every case upon the party propounding a Will; and he must satisfy the conscience of the Court that the instrument so propounded is the last Will of a free and capable testator; the second is, that, if a party writes or prepares a Will under which he takes a benefit, that is a circumstance that ought generally to excite the suspicion of the Court and calls upon it to be vigilant and zealous in examining the evidence in support of the instrument in favour of which it ought not to pronounce unless the suspicion is removed, and it is judicially satisfied that the paper propounded does express the true Will of the deceased. In AIR 1929 45 (Privy Council) , the Judicial Committee made it clear that "the principle which requires the propounder to remove suspicious from the mind of the Court is not confined only to cases where the propounder takes part in the execution of the Will and receives benefit under it. There may be other suspicious circumstances attending on the execution of the Will and even in such cases it is the duty of the propounder to remove all coluds and satisfy the conscience of the court that the instrument propounded is the last Will of the testator.

This view is supported by the following" observations made by Lindley and Davey, L.JJ; in Tyrrell v. Painton 1894 P 151 at pp 157, 159.

The rule in (1838) 2 Moo PC 480; (1875) 7 HL 448; and Brown v. Fisher (1890) 63 LT 465, is not in my opinion, confined to the single case in which a Will is prepared by or on the instructions of the person taking large benefits under it, but extends to all cases in which circumstances exist which excite has suspicion of the Court; and wherever such circumstances exist, and whatever their nature may be, it is for those who propound the Will to remove such suspicion and to prove affirmatively that the testator knew and approved of the contents of the document, and it is only where this is done that the onus is thrown on those who oppose the Will to prove fraud or undue influence, or whatever else they rely on to displace the case made for proving the Will." (Lindley L.J.)

It must not be supposed the principle in (1838) 2 Moo PC 480 is confined to cases where the person who prepares the Will is the person who takes the benefit under it that is one state of things which raises a suspicion; but the principle is that wherever a Will is prepared under circumstances which raise a well-grounded suspicion that it does not express, the mind of the testator the Court ought not to pronounce in favour of it unless that suspicion is removed. (Davey L.J.)

Again, dealing with the question of onus of presumption regarding the due execution of Will, in AIR 1974 SC, 1999 Surendera Pal v. Dr. (Mrs.) Sarswati Arora. Their Lordships observed in para 7 of the judgment thus:

The propounder has to show that the Will was signed by the testator; that he was at the relevant time in a sound disposing state of mind, that he understood the nature and effect of the dispositions, that he put his signatures to the testament of his own

free Will and that he has signed it in the presence of the two witnesses who attested it in his presence and in the presence of each other. Once these elements are established, the onus which rests on the propounder is discharged. But there may be cases in which the execution of the Will itself is surrounded by suspicious circumstances, such as, where the signature is doubtful, the testator is of feeble mind or is overawed by powerful minds interested in getting his property, or where in the light of the relevant circumstances the dispositions appear to be unnatural, improbable and unfair, or where there are other reasons for doubting that the dispositions of the Will are not the result to the testator''s free Will and mind. In all such cases where there may be legitimate suspicious circumstances those must be reviewed and satisfactorily explained before the Will is accepted. Again in cases where the propounder has himself taken a prominent part in the execution of the Will which confers on him substantial benefit that is itself one of the suspicious circumstances which he must remove by clear and satisfactory evidence. After all, ultimately it is the conscience of the Court that has to be satisfied, as such the nature and quality of proof must be commensurate with the need to satisfy that conscience and remove any suspicion which a reasonable man may, in the relevant circumstances of the case, entertain. See H. Venkatachala Iyengar Vs. B.N. Thimmajamma and Others, and Rani Purnima Devi and Another Vs. Kumar Khagendra Narayan Dev and Another, In the latter case this Court after referring to the principles stated in the former case emphasised that where there are suspicious circumstances in onus will be on the propounder to explain them to the satisfaction of the Court before the Will could be accepted as genuine; and where the caveator alleges undue influence, fraud and coercion the onus is on him to prove the same. It has been further pointed out that the suspicious circumstances may be as to the genuineness of the signature of the testator, the condition of the testator''s mind, the depositions made in the Will which may be unnatural or unfair or improbable when considered in the light of the relevant circumstances.

It is in the light of the principles laid down in the above judgments that the evidence in this case is to the appreciated to find out whether the Will in dispute (copy Ex. P1) can be said to be a valid instrument executed by Atma Singh testator with his free sound and disposing mind. In case the execution of the Will appears to be surrounded by suspicious circumstances, the that case, it is incumbent upon the propounder to dispel all those circumstances at tending the Will by leading satisfactory evidence.

11. From the evidence on record, the Court is required to find out whether at the relevant time of the execution of the Will (EX.P1), the testator was in his sound disposing state of mind and he and put his signatures of thumb impression thereon, of his own free Will. In case the aggrieved person challenges the very validity of the Will, it becomes incumbent upon the propounder to establish by leading satisfactory evidence that this instrument of Will in fact was signed or thumb marked by its testator.

12. If we test the evidence on record on the touch-stone of cross-examination with the aid of the aforesaid well settled principles relating to the due execution of the Will, then in my view, the Will (Ex P1) does not appear to be a genuin document and there are a large number of suspicious circumstances from which it can be inferred that the Will in dispute is a fabricated instrument.

13. The following facts stand established on record:

(i) The earlier Will dated April 18, 1973 was got scribed by a regular deed-writer at Hoshiarpur and was got cancelled by registered document on June 16, 1973. Under this Will, the Plaintiff was the sole beneficiary. The Will in dispute dated August 17, 1973 was executed within two months of the cancellation of the first Will. The testator who knew the significance of getting the document registered did not think it proper to et Will (Ex.P1) scribed by a regular deed-writer or to get it registered. The explanation given by the Plaintiff as to why the testator cancelled the registered Will is that his wife used to quarrel with his mother Smt. Bhago. This explanation runs counter to the reasons given in the Will. In the Will, it is stated that in the earlier Will, he has not given any share to his wife i.e. Smt. Bhago.

(ii) The recitation in the Will that in the earlier, Will, the testator has not given any share to his wife is factually incorrect because in the earlier registered Will, the testator has provided for maintenance for his wife.

(iii) The Plaintiff being a beneficiary under the Will took active part in its execution.

(iv) The scribe Sansar Singh PW2 and attesting witnesses Gurbax Singh PW3 and Joginder Singh PW4 of Will (Ex. P1) had gone to the house of the testator of their own accord without being summoned by him.

(v) The unnatural conduct of the scribe and the attesting witnesses leads to strong inference that they joined hands with the Plaintiff in manufacturing the Will.

(vi) On the death of the testator, mutation of infierifance was entered on the basis of natural succession. No attempt was made by the Plaintiff to get the mutation of inheritance entered on the basis of the Will. He did not produce the Will when the Assistant Collector IInd Grade visited the village for sanctioning the mutation.

14. Apart from this, the first Appellate court, which is a final Court of fact, took the following facts into consideration while negativing the Will:

(i) In the Will (Ex. P1), it is stated that the testator was suffering form chronic dysentry and palpitation of heart at the time of the alleged execution of the Will whereas the Plaintiff has stated that the testator was hale and hearty ;

(ii) In the Will, it is recited that if the testator is cured of the disease, he will himself get the Will registered otherwise his son and wife would get it registered by incurring expenses.

These recitals reflect the guilty conscious of the persons who have got the Will prepared.

(iii) The Will was not registered during the life time of the testator who lived for 1-1/2 months after the execution of the Will. No explanation is forthcoming for not getting the Will registered during the life time of the testator. The Plaintiff did not get the thumb impression of the testator on the Will Ex. P1 compared with his admitted thumb impression which existed on the Will dated April 18, 1973, which was scribed by a regular petition-writer and was duly registered and the subsequent deed of cancellation duly registered cancelling the Will dated April 18, 1973.

(iv) The ocular evidence concerning the execution of the Will is highly doubtful and unbelievable.

(v) The other natural heir; namely Smt. Bakhshish Kaur was admittedly rendering service to the testator and she had very good relation with him and she has been deprived of without good reasons.

15. The first Appellate Court after so observing held that the suspicious circumstances pointed out by it remained unexplained and it concluded that the Will in question is shrouded by highly suspicious circumstances and is not a genuine document. The Will was not produced before the revenue officer when he dealt with the mutation proceedings in the village. The conclusions arrive at by the first Appellate Court on the basis of evidence are essentially a finding of fact. Apart from this, I have gone through the evidence and have pointed out the suspicious circumstances other than those which are pointed out by the first Appellate Court and these suspicious circumstances leave no manner of doubt that the Will is a highly suspicious document and hence to be rejected.

For the reasons stated above, the appeal fails and the same is dismissed. No order as to costs.