

Ratan Mani Vs State and Others

FAO No. 115 of 1996

Court: Delhi High Court

Date of Decision: Jan. 4, 2011

Citation: (2011) 2 AD 323 : (2011) 121 DRJ 615

Hon'ble Judges: Mool Chand Garg, J

Bench: Single Bench

Advocate: Rajeev Sharma and Chandan Sharma, for the Appellant; J.C. Mahendru, for the Respondent

Final Decision: Dismissed

Judgement

Mool Chand Garg, J.

The Appellant by this appeal assails the order passed by learned Additional District Judge in a probate case bearing

No. 114/1994 whereby the learned ADJ allowed the said petition instituted by Smt. Krishna Batra, mother of the deceased testator, Sh. Vijay

Kumar Batra for the grant of letters of administration of Will dated 15.04.1984 alleged to have been executed by her deceased son whereby he

bequeathed his entire moveable and Immovable estate in favour of his mother, propounder of the Will.

2. There is no dispute that the testator Sh. Vijay Kumar Batra died in Delhi on 25.06.1984. On the date of his death, he was survived by his

parents, 3 brothers and 2 married sisters besides his widow, Smt. Rajni Batra @ Ratan Mani. Nobody contested the probate petition except the

widow of the testator, namely, Smt. Rajni Batra @ Ratan Mani, the Appellant in this case. During the pendency of the probate petition Smt.

Krishna Batra, the propounder of the Will expired but before that, she also executed a Will dated 30.11.1985 bequeathing the estate of Late Sh.

Vijay Kumar Batra which devolved upon her on the basis of Will dated 15.04.1984 of Late Sh. Vijay Kumar Batra in favour of her 3 sons,

namely, Sh. Satish Batra, Sh. D.K. Batra and Sh. H.K. Batra, who are now Respondents No. 2(1) to 2(3) representing the estate of Late Smt.

Krishna Batra, the propounder in the probate petition.

3. In her objections to the grant of letters of administration, the Appellant had questioned the factum of the validity of the Will dated 15.04.1984

and also alleged that the said Will was forged by her mother-in-law Smt. Krishna Batra in collusion with her husband so as to deprive her of her

right in the estate of the deceased Sh. Vijay Kumar Batra. It was also her case that Smt. Krishna Batra had not disclosed all the estates left by the

deceased testator. Accordingly, she prayed for dismissal of the probate petition.

4. While adjudicating the probate petition, the learned ADJ framed following issues:

(i) Whether the petition is not maintainable for the reasons mentioned in the objections petition?

(ii) Whether the Will dated 15.4.84 propounded by the Petitioner was duly executed by Shri Vijay Kumar Batra (deceased) while possessed of

sound disposing mind?

(iii) Relief.

5. Evidence led on behalf of the propounder of the Will comprised of five witnesses in all. PW1, Sh. Arvind Kumar Singhal and PW2, Dr. Govind

Pershad are the two attesting witnesses to the Will Ex. PW1/1 left by late Sh. Vijay Kumar Batra. PW3, Sh. Jai Gopal Sikka and PW4, Dr. D.K.

Gupta are the attesting witnesses of the Will left by Smt. Krishna Batra, mother of Late Sh. Vijay Kumar Batra while PW5, Sh. Harish Kumar

Batra is the younger brother of Late Sh. Vijay Kumar Batra.

6. In defence the Appellant only examined herself as RW1. It may be mentioned here that no handwriting expert to prove that the signatures of Sh.

Vijay Kumar Batra were fabricated or forged was examined on behalf of the Appellant/objector.

7. In these circumstances, the learned ADJ decided all the issues in favour of the deceased propounder of the Will and dismissed the objections

filed by the Appellant by the impugned order. Letters of administration with copies of the Will Ex. PW1/1 and Ex. PW3/1 annexed thereto were

granted in favour of Respondents No. 2(1) to 2(3) representing Late Smt. Krishna Batra empowering them to administer the estate of deceased

Late Sh. Vijay Kumar Batra as mentioned in para8 of the probate petition. Of course, they were burdened with complying with other formalities.

8. It may be observed here that while deciding issue No. 1, it has been observed that since it was for the objector/Appellant to show as to how the

petition filed by Late Smt. Krishna Batra was not maintainable, she having failed to lead any evidence in this regard, the said issue was decided

against the objector. It was also held that after the death of Smt. Krishna Batra, the 3 sons being her representatives were entitled to continue the

petition.

9. Regarding issue No. 2, relying upon the testimony of the two attesting witnesses, the ADJ held that the Will Ex. PW1/1 had been duly executed

by late Sh. Vijay Kumar Batra and similarly Ex. PW3/1 was executed by Smt. Krishna Batra in sound and disposing mind.

10. Taking note of the submissions made on behalf of the Appellant/objector regarding the Will being shrouded with suspicious circumstances and

inherent improbabilities inasmuch as the said Will was executed at a very early age by deceased Vijay Kumar Batra in his 40s and has deprived the

objector/Appellant out of the bequeath, the learned ADJ has taken note of the suspicious circumstances narrated on behalf of the Appellant as

follows:

(a) There is no explanation in the Will Ex.PW1/1 why the testator had executed the said Will at a young age of 37 years.

(b) There is nothing on record to show as to who drafted will and at whose instructions it was drafted, who typed it and on whose instructions the

same was typed.

(c) The will was got typed much before 15.4.1984 and there is no explanation and reason why this Will was post dated and it creates suspicion.

(d) None of the attesting witnesses i.e. either PW.1 or pW2 has stated that the alleged Will Ex.PW1/1 was read over and explained to the

Testator in their presence.

(e) The conduct of the attesting witnesses PW.1 and pW2 at the time of their visit to the house of the testator on 15.04.1984 is itself in doubt.

(f) The exclusion of his own wife by the testator from inheritance of his estate on the ground that he had strained relation with her from the last 2

years creates suspicion.

(g) Noninforming the office regarding the alleged Will by the testator is most unnatural act and casts suspicion about the execution of the Will in

question.

(h) Nontyping the name of the witnesses on Will Ex.PW1/1 is also creating suspicion.

(i) Nonregistration of the alleged Will and the papers used for its writing; and

(j) Nonproduction of office record and some bank record for comparison of signatures of the testator by the Court or hand writing expert.

11. It may be observed here that all these circumstances have been again highlighted by the Appellant to assail the order of the learned ADJ before

this Court.

12. It would be appropriate to take note of the observations made by the learned ADJ while dealing with these objections in paragraph 12 of the

judgment which reads as under:

12. Ld. counsel for the objector has urged that the propounder of the Will in question has failed to explain the the aforesaid suspicious

circumstances surrounding the Will and, therefore, it was submitted that the instant petition should be dismissed. In Surendra Pal and Others Vs.

Dr. (Mrs.) Saraswati Arora and Another, it was held by the Supreme Court as under:

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 where there are suspicious circumstances the 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. If the caveator does not discharge the burden which rests upon him in establishing the circumstances which show

that the Will had been obtained by fraud or undue influence, a probate of the Will must necessarily be granted if it is established that the testator

had full testamentary capacity and had in fact executed it validly with a free will and mind.

In case Kalyan Singh Vs. Smt. Chhoti and Others, : it has been held as under:

In order to judge the credibility of witnesses and disengage the truth from falsehood the court is not confined only to their testimony and demeanour.

It would be open to the Court to consider circumstances brought out in the evidence or which appear from the nature and content of the

documents itself. It would be also open to the court to look into surrounding circumstances as well as inherent improbabilities of the case to reach a

proper conclusion on the nature of evidence adduced by the party.

In Ramchandra Rambux Vs. Champabai and Others, (a) and (b), it was held as under:

The mode of proving a Will does not ordinarily differ from that of proving any other document except as to the special requirement of attestation

proscribed in the case of a Will by Section 63 of the Succession Act. Where/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. In such a case the Court would naturally expect that all

legitimate suspicious should be completely removed before the document is accepted as the last will of the testator.

It has been further held that:

The issue, namely whether the testator did execute a will and if he did, then whether it was duly attested by the witnesses, cannot be determined by

considering the evidence adduced in the court separately from surrounding circumstances which have also been brought out in the evidence, or

which appear from the nature and contents of the document itself.

13. After making the aforesaid observations which mentions the legal position while considering the circumstances which may be considered as

suspicious circumstance surrounding the Will of which probate is sought for and the onus to prove on the person who alleges such suspicion, the

learned ADJ then considered the testimony of the two witnesses who attested the Will of late Sh. Vijay Kumar Batra examined as PW1 and PW2

who were very close friends of the testator and both of whom had gone to the house of testator in the morning of 15.04.1984 when the Will Ex.

PW1/1 was signed by the testator in their presence after understanding the contents thereof and they both had also signed on the Will as attesting

witnesses in presence of the testator and also in presence of each other. The signatures of the testator and each other were identified by PW1 and

PW2 on Ex. PW1/1. The two witnesses also stated that the testator was in a sound and disposing mind at the time when the Will was executed. It

was observed that there was nothing unnatural for a person to get his Will attested by his close friends and if the Will is attested by his close

friends, it cannot be considered as a suspicious circumstance, moreover, when the testimony of these two witnesses is clear on the point that the

testator was in a sound and disposing mind at the time he executed the Will, there being nothing in rebuttal thereto, the Court felt that there was no

reason to discard the statement of these two witnesses. It may also be observed that the learned ADJ has also taken note of the crossexamination

of these two witnesses where nothing could be brought out which may affect their testimony with regard to their presence at the house of the

testator or their acquaintance with the testator. Moreover, the learned ADJ rightly took note of the fact that even though the objector took a plea

of her mother-in-law having forged the Will, she led no evidence to prove her alleged plea of forgery.

14. Referring to the circumstance of disinheriting his wife which plea has been strongly emphasized even before this Court by the learned Counsel

for the Appellant as a very strong suspicious circumstance, the learned ADJ has observed that:

14. It is revealed on perusal of Will Ex.PW1/1 that the testator had disinherited his wife (who is objector here) from succeeding to his estate and

gave very cogent reason for the same in his will Ex.PW1/1. He mentioned in the said will Ex.PW1/1 that his wife had made his life miserable and

deserted him for the last over two years and refused to come to live with him despite sincere efforts in this regard made by him. The testator was

married to the objector on 12.10.1980 and it is mentioned in para 6 of the petition that the objector has deserted him w.e.f. August 1981 and

since then till his death she had not lived with him. The fact is not denied by the objector in her reply/objections. The objector as RW.1 in her

crossexamination stated that she was in Nagpur during August 1983 to June 1984 in connection with her studies of BP Ed, but admitted that she

had no correspondence with her husband during the said period. She further stated in her crossexamination that her husband was transferred to

Chandigarh and Patiala after her marriage but she could not tell when he was so transferred nor she could tell the address of her husband at

Chandigarh or Patiala. She admitted that she never stayed with her husband at Patiala. She has also admitted in her crossexamination that she

could not tell the name of any of the friends of her husband and she gave a vague reply when she was asked to tell whether pW1 Arvind Kumar

Singhal and PW2 Dr. Govind Prasad were very close friend of the testator by stating that she did not know about the same. It is very strange that

a wife would not know the friends of her husband and that newly married wife would not correspond with her husband if she was away for further

study. It would be relevant to mention here that the objector has stated in her objections that she had gone for B. Ed to Amarwati but in her

crossexamination she stated that she did B.P. Ed. from Nagpur. The objector has not placed any documentary evidence to show that she had

undertaken any further study after her marriage either from Amrawati or Nagpur.

15. The observation made above which have been extracted out of the crossexamination of the objector clearly shows that the objector despite

her marriage with the Appellant was not residing with the Appellant but had been keeping herself busy in her studies which furnishes a good ground

to disinherit her as this shows that she had no interest in the family of the deceased testator. This clearly goes to show that the objector had made

life of the deceased testator miserable and had virtually deserted him for the last over 2 years before he executed the Will rather she even refused

to come to live with him despite sincere efforts. All these things have been mentioned by the deceased testator in the Will Ex. PW1/1 as noticed by

the learned ADJ.

16. There are other circumstances also mentioned by the learned ADJ while holding that disinheritance of the objector was not a suspicious

circumstance so as to refuse grant of probate of the Will of late Sh. Vijay Kumar Batra in favour of Late Smt. Krishna Batra, now represented by

Respondents No. 2(1) to 2(3). I need not repeat those circumstances as have been mentioned in the order of the learned ADJ.

17. Coming to the second circumstance regarding execution of the Will at an early age being a suspicious circumstance, the learned ADJ has not

agreed with the Appellant in this regard. I also do not find any substance in the aforesaid argument inasmuch as the first reason given by the testator

himself in the Will Ex. PW1/1 in having disinherited his wife who made his life miserable, is sufficient explanation as to why the Appellant wanted to

execute a Will so as to make his intentions well known. In any case, the observations made by the learned ADJ on this issue also explains the

position very clearly. Those observations which are relevant are being reproduced hereunder for the sake of reference:

I do not find any merit in the argument of the learned Counsel for the objector that the will is suspicious because it was executed by the testator at

his young age of 36 or 37 years. There is no time for making a will by a person and he is free to make the same at any time he likes. In this case,

the husband was living in hostility with his wife at the time he had executed his will in question. It is deposed by PW.1 Mr. Arvind Kumar Singhal

that the testator had told him that he was executing his will because earlier about a month back his friend had expired at his young age. Counsel for

the objector has contended that since PW.1 could not tell the name of the friend of the testator who had died, raises a suspicious circumstance

surrounding the will. I do not agree with the learned Counsel for the objector on this aspect. I am of the opinion that a person who signed the will

as an attesting witness is not required to probe from the testator about the names etc. of his friends who might have expired prior to making his will

in question. PW.1 Shri Arvind Kumar Singhal has categorically stated on oath in his crossexamination that the testator had told him that he was

making will in question in favour of his mother because his relations with his wife were not good.

18. The aforesaid observations are based upon the evidence which came on record in the form of the statement made by PW1. His testimony

explains the reasons as to why the deceased testator thought it appropriate to execute his Will at an early age. Thus, there is adequate explanation

given by the deceased testator for executing the Will at an early age coupled with the circumstance as mentioned above with respect to disinheriting

his wife gives adequate explanation regarding early execution of the Will and, therefore, it would not be a circumstance which should be taken to

deny the benefit of the Will to the mother of the deceased testator.

19. In the light of the aforesaid two circumstances which have been justified to be not suspicious circumstances, in the facts of this case, the other

ground of which notice has been taken by the learned ADJ are of no consequence. As far as this Court is concerned, learned Counsel appearing

for the Appellant highlighted only the aforesaid two circumstances which have been discussed by me above. Even otherwise, having gone through

the record of this case, I find that no other circumstance which have been highlighted on behalf of the Appellant is of any consequence in the facts

and circumstances of this case so as to throw out the probate petition and not to grant probate to the Respondents who sought for the same.

20. Now coming to the Will of late Smt. Krishna Batra, Ex. PW3/A, it has also been proved by two attesting witnesses, Sh. Jai Gopal Sikka and

Dr. D.K. Gupta who appeared as PW3 and PW4 respectively. PW3 is Samadhi of late Smt. Krishna Batra while PW4 is the family doctor. They

have deposed that Smt. Krishna Batra executed her Will Ex. PW3/1 in their presence and they both had signed on her Will as attesting witnesses

in her presence and also in presence of each other. Again there is no evidence led on behalf of the objector to question the authenticity of the

execution or the veracity of the Will by late Smt. Krishna Batra.

21. Learned Counsel appearing for the Appellant, besides reiterating two grounds which according to the learned Counsel were sufficient to

dismiss the probate petition i.e. the execution of the Will at an early age and disinheriting his own wife, has also relied upon following judgments:

1.) Raj Kaur v. Mohinder Kaur (Died) and Ors. (19971) PLR 115

2.) H. Venkatachala Iyengar Vs. B.N. Thimmajamma and Others, .

22. I have considered the aforesaid two judgments. Insofar as the judgment delivered by the Punjab & Haryana High Court in the case of Raj

Kaur v. Mohinder Kaur (Supra), learned judge has not discarded the possibility of a young man executing a Will. The learned judge has also

submitted that in the facts and circumstances of that case, the execution of the Will at an early age itself caused a suspicious circumstance.

23. In the other case the Supreme Court has laid down various principles which can be taken note of by a probate court while granting probate of

a Will as the Court while considering the grant of probate or to refuse granting the probate speaks for the deceased testator who is no more. The

observations made by the Supreme Court in this regard are reproduced for the sake of reference:

18. What is the true legal position in the matter of proof of wills? It is well known that the proof of wills presents a recurring topic for decision in

courts and there are a large number of judicial pronouncements on the subject. The party propounding a will or otherwise making a claim under a

will is no doubt seeking to prove a document and, in deciding how it is to be proved, we must inevitably refer to the statutory provisions which

govern the proof of documents. Sections 67 and 68 of the Evidence Act are relevant for this purpose. u/s 67, if a document is alleged to be signed

by any person, the signature of the said person must be proved to be in his handwriting, and for proving such a handwriting under Sections 45 and

47 of the Act the opinions of experts and of persons acquainted with the handwriting of the person concerned are made relevant. Section 68 deals

with the proof of the execution of the document required by law to be attested; and it provides that such a document shall not be used as evidence

until one attesting witness at least has been called for the purpose of proving its execution. These provisions prescribe the requirements and the

nature of proof which must be satisfied by the party who relies on a document in a court of law. Similarly, Sections 59 and 63 of the Indian

Succession Act are also relevant. Section 59 provides that every person of sound mind, not being a minor, may dispose of his property by will and

the three illustrations to this section indicate what is meant by the expression "a person of sound mind" in the context. Section 63 requires that the

testator shall sign or affix his mark to the will or it shall be signed by some other person in his presence and by his direction and that the signature or

mark shall be so made that it shall appear that it was intended thereby to give effect to the writing as a will. This section also requires that the will

shall be attested by two or more witnesses as prescribed. Thus the question as to whether the will set up by the propounder is proved to be the

last will of the testator has to be decided in the light of these provisions. Has the testator signed the will? Did he understand the nature and effect of

the dispositions in the will? Did he put his signature to the will knowing what it contained? Stated broadly it is the decision of these questions which

determines the nature of the finding on the question of the proof of wills. It would prima facie be true to say that the will has to be proved like any

other document except as to the special requirements of attestation prescribed by Section 63 of the Indian Succession Act. As in the case of proof

of other documents so in the case of proof of wills it would be idle to expect proof with mathematical certainty. The test to be applied would be the

usual test of the satisfaction of the prudent mind in such matters.

19. However, there is one important feature which distinguishes wills from other documents. Unlike other documents the will speaks from the death

of the testator, and so, when it is propounded or produced before a court, the testator who has already departed the world cannot say whether it

is his will or not; and this aspect naturally introduces an element of solemnity in the decision of the question as to whether the document

propounded is proved to be the last will and testament of the departed testator. Even so, in dealing with the proof of wills the court will start on the

same enquiry as in the case of the proof of documents. The propounder would be called upon to show by satisfactory evidence that the will was

signed by the testator, that the testator at the relevant time was in a sound and disposing state of mind, that he understood the nature and effect of

the dispositions and put his signature to the document of his own free will. Ordinarily when the evidence adduced in support of the will is

disinterested, satisfactory and sufficient to prove the sound and disposing state of the testator's mind and his signature as required by law, courts

would be justified in making a finding in favour of the propounder. In other words, the onus on the propounder can be taken to be discharged on

proof of the essential facts just indicated.

20. There may, however, be cases in which the execution of the will may be surrounded by suspicious circumstances. The alleged signature of the

testator may be very shaky and doubtful and evidence in support of the propounder's case that the signature in question is the signature of the

testator may not remove the doubt created by the appearance of the signature; the condition of the testator's mind may appear to be very feeble

and debilitated; and evidence adduced may not succeed in removing the legitimate doubt as to the mental capacity of the testator; the dispositions

made in the will may appear to be unnatural, improbable or unfair in the light of relevant circumstances; or, the will may otherwise indicate that the

said dispositions may not be the result of the testator's free will and mind. In such cases the court would naturally expect that all legitimate

suspensions should be completely removed before the document is accepted as the last will of the testator. The presence of such suspicious

circumstances naturally tends to make the initial onus very heavy; and, unless it is satisfactorily discharged, courts would be reluctant to treat the

document as the last will of the testator. It is true that, if a caveat is filed alleging the exercise of undue influence, fraud or coercion in respect of the

execution of the will propounded, such pleas may have to be proved by the caveators; but, even without such pleas circumstances may raise a

doubt as to whether the testator was acting of his own free will in executing the will, and in such circumstances, it would be a part of the initial onus

to remove any such legitimate doubts in the matter.

21. Apart from the suspicious circumstances to which we have just referred, in some cases the wills propounded disclose another infirmity.

Propounders themselves take a prominent part in the execution of the wills which confer on them substantial benefits. If it is shown that the

propounder has taken a prominent part in the execution of the will and has received substantial benefit under it, that itself is generally treated as a

suspicious circumstance attending the execution of the will and the propounder is required to remove the said suspicion by clear and satisfactory

evidence. It is in connection with wills that present such suspicious circumstances that decisions of English courts often mention the test of the

satisfaction of judicial conscience. It may be that the reference to judicial conscience in this connection is a heritage from similar observations made

by ecclesiastical courts in England when they exercised jurisdiction with reference to wills; but any objection to the use of the word "conscience" in

this context would, in our opinion, be purely technical and academic, if not pedantic. The test merely emphasizes that, in determining the question

as to whether an instrument produced before the court is the last will of the testator, the court is deciding a solemn question and it must be fully

satisfied that it had been validly executed by the testator who is no longer alive.

24. All these aspects have been considered in this case by the learned ADJ while allowing the probate petition. The observations of the learned

ADJ explains the reasons regarding early execution of the Will and disinheriting the wife by the deceased testator. In fact, the Will Ex. PW1/1 itself

gives reasons for early execution and disinheriting the wife of the deceased testator. Both the Wills have been proved to have been executed by

Sh. Vijay Kumar Batra and Smt. Krishna Batra and attesting witnesses of both the Wills have come in the witness box. The attesting witnesses

have stated that the testator were of sound and disposing mind. The plea of forgery taken by the objector/Appellant has not been substantiated by

her inasmuch as she had not been able to lead any evidence to show that the signatures appearing on the Will left by Late Sh. Vijay Kumar Batra

or Late Smt. Krishna Batra are forged and fabricated. No other evidence to prove any conspiracy in this regard has also been led by her.

Consequently, the two judgments cited by the learned Counsel for the Appellant does not come to the rescue of the Appellant in opposing the

impugned order passed by the learned ADJ.

25. In view of the aforesaid, I do not find any merit in the appeal, consequently, the same is dismissed with no order as to costs.

26. TCR be sent back forthwith along with a copy of this order.