

(2011) 09 DEL CK 0069

Delhi High Court

Case No: FAO No. 810 of 2003

Shri Rai Singh

APPELLANT

Vs

The State and Others

RESPONDENT

Date of Decision: Sept. 26, 2011

Acts Referred:

- Succession Act, 1925 - Section 299, 384

Citation: (2011) 183 DLT 757

Hon'ble Judges: Valmiki J Mehta, J

Bench: Single Bench

Advocate: G.D. Chopra, for the Appellant;

Final Decision: Dismissed

Judgement

Valmiki J Mehta, J.

The challenge by means of this First Appeal under Sections 299 and 384 of the Indian Succession Act, 1925 is to the impugned judgment of the Court below dated 10.11.2003, and by which judgment the Court below allowed the probate petition of the Petitioner/Respondent No. 2 with respect to the Will of Smt. Dhapo Devi dated 8.1.1985.

2. The facts of the case are that the Respondent No. 2/Smt. Shakuntla Devi filed a petition for probate of the Will dated 8.1.1985 of the deceased Smt. Dhapo Devi. Respondent No. 2/Smt. Shakuntla Devi was the grand-daughter of the deceased. Except the Appellant herein all other legal heirs of Smt. Dhapo Devi, including her sons, gave their no objections to the probate petition. In fact, two of the sons of Smt. Dhapo Devi, namely, Sh. Narain Singh and Sh. Dilbagh Singh are the attesting witnesses to the Will. The Appellant herein is the father of the Respondent No. 2 and who contested the petition. The Appellant herein contested the probate petition and urged that the subject Will dated 8.1.1985 was a forged and fabricated document with the object of mis-appropriating the property of the deceased being plot No.

3. The Respondent No. 2/probate Petitioner examined Sh. Narain Singh as PW-1, who was the son of the deceased and also the attesting witness of the Will. The Will was proved and exhibited as PW1/1. The probate Petitioner also examined herself as PW-2 and proved the death certificate as Ex.PW2/1. PW-3/Sh. Ashok Kumar Midha deposed about the registration of the Will. PW-5/Sh. Om Parkash examined on behalf of the probate Petitioner was the Clerk from the State Bank of Patiala, Pooth Kalan branch and who brought the specimen signatures card containing the thumb impression of Smt. Dhapo Devi. The handwriting expert Sh. R.P. Singh was examined as PW-6.

4. The objector/appellant herein examined Smt. Kiran Devi as RW-1 to prove the date of death of Smt. Dhapo Devi as different from that which was the case of the probate Petitioner/Respondent No. 2. Whereas the probate Petitioner mentioned the factum of death of Smt. Dhapo Devi as 30.8.1986 the objector claimed that Smt. Dhapo Devi had in fact expired on 7.10.1985. RW-2 was Sh. Om Prakash an employee of State Bank of India to prove the last pension credited in the account of Smt. Dhapo Devi was on 1.10.1985. 5.

5. By the impugned judgment, the trial Court has held that the Will of Smt. Dhapo Devi exhibited as PW1/1 to be a valid Will. The Probate Court disbelieved the testimony with regard to the alleged difference in the date of death by observing as under:

The death of Smt. Dhapo Devi is not in dispute. The Petitioner in para 1 of the petition had categorically stated that Smt. Dhapo Devi had died at Village Poothkalan, Delhi, on 30.8.06. The averments in this para were not denied specifically or by necessary implication. In fact there is not even a whisper in the entire objections preferred by the objector Shri Rai Singh that death certificate showing the date of death of Smt. Dhapo Devi as 30.8.86 was a forged and fabricated document. The objector has tried to dispute the date of death by stating that Smt. Dhapo Devi had in fact died on 07.10.85. A death certificate showing the date of death of Smt. Dhapo Devi as 07.10.85 was also proved as Ex.RA. However, the evidence with regard to the date of death as 07.10.85 cannot be looked into being beyond pleadings as this is very well settled law that whatever has not been pleaded cannot be proved by any amount of evidence. Not only that, the objector had nowhere stated the date of death of Smt. Dhapo Devi was 07.10.85. In fact, he had impliedly admitted the date of death as 30.8.86 by not traversing the averments of para 1 of the petition specifically or by necessary implication. of course, the objector has tried to create some confusion about the date of death of the testatrix by producing on record a certificate showing her date of death as 07.10.85 but otherwise also once death of testatrix is admitted the date of her death is not very relevant.

6. The trial Court also referred to the fact that two sons of Smt. Dhapo Devi, who were the attesting witnesses had no reason to act against their own interest inasmuch as by the Will, the immovable property at Pitampura was only given to the probate Petitioner to the exclusion of all other legal heirs including two sons who are the attesting witnesses.

7. The trial Court has also referred to the fact that the objector/appellant gave ambivalent statement with respect to the thumb impression of the testator on the Will and therefore it was held that the objector had not disputed the signatures on the Will. The relevant observations in the impugned judgment read as under:

During the course of cross examination the Objector admitted that the thumb impression on the Will Ex.PW1/1 was of Smt. Dhapo Devi but he volunteered to add that the thumb impression could be affixed before the death and even after the death of a person, meaning thereby that the objector admitted during his cross examination that the Will was thumb marked by Smt. Dhapo Devi but her thumb impression must have been obtained just before her death or after her death. This was therefore the case of the objector in his objections as stated by me hereinabove. He had simply taken up a vague plea that the Will as propounded by the Petitioner was a forged and fabricated document. He had nowhere averred in the Objections that thumb impression of Smt. Dhapo Devi was obtained after her death. Thus this part of the testimony of objector Shri Rai Singh that her thumb impression was obtained after her death has to be excluded being beyond pleadings.

8. The trial Court has also held that merely because the Respondent No. 1/probate Petitioner was married, cannot mean that it should be held that she could not have taken care of the deceased Smt. Dhapo Devi.

9. Finally, the trial Court has referred to the fact that the Will has been duly registered and therefore there is attached to it an authenticity on account of registration. In fact, the registration and execution were on the same date.

10. The counsel for the Appellant basically argued the following points before this Court:

(i) The Will is in English and the deceased was an illiterate lady and thus it should be held that the Will is a forged and fabricated document.

(ii) No scribe has been mentioned who drafted the Will.

(iii) The objector/appellant was originally not made as a party to the probate petition which was allowed but which original order was set aside on the application of the objector and which was thereafter contested. It was argued that this conduct of the probate Petitioner disentitled her to the probate.

(iv) The name of the typist who typed the Will has not been mentioned.

(v) The age of the deceased has not been mentioned in the Will.

(vi) There was collusion between the attesting witnesses and the probate Petitioner/beneficiary.

(vii) The contradiction in the date of death of the deceased of Smt. Dhapo Devi is a relevant suspicious circumstance to deny the grant of probate.

11. In my opinion, the arguments as urged on behalf of the Appellant have no merit and the appeal is liable to be dismissed. Merely because the deceased was an illiterate lady and the Will is in English is no ground in itself to hold the Will, that too a registered Will, to be a forged and fabricated document. There has been detailed deposition by the attesting witness, and who was the son of the testator, namely Sh. Narain Singh as to how they went to the office of the sub-Registrar and where the deceased gave the necessary instructions to the typist in Hindi to make the Will and pursuant to which instructions the Will was made. I therefore reject the argument that the Will should not be held to be a valid document merely because the deceased did not understand English or because there was no scribe or the name of the typist who typed the Will has not been mentioned. The non-mentioning of the age in the Will is not by itself such a strong circumstance in the facts of the present case to hold the Will to be a fabricated document because not only is the Will duly registered before the sub-Registrar, as stated above, the two sons of the deceased testator who were disinherited were the attesting witnesses to the Will and who therefore would not have otherwise deposed to the validity of the Will. I may additionally note that all other legal heirs gave their no objections to the Will of Smt. Dhapo Devi and it was only the objector/appellant who contested, probably more so as an ego issue because the Appellant felt that he had brought up the probate Petitioner as a daughter, and in spite of that the probate Petitioner did not mention about the factum of the Will to him. So far as the contradiction in date of death is concerned, I have reproduced above the relevant portion of the impugned judgment which holds that this plea cannot be looked into because this plea totally de hors the pleadings. Further, the trial Court in addition to the above has noted that the witness Smt. Kiran Devi whose deposition was recorded on behalf of the objector/appellant only mentioned the factum of death of the deceased in the "panda pothi" brought by her (a private document based on information received) but the original of the document Ex.RW1/1 "panda pothi" was not in her handwriting and she did not know munda Hindi in which this document was written and nor did the pothi bear any page number.

12. In view of the above, I hold that there is no such grave suspicious circumstance to hold that the Will dated 8.1.1985 of the deceased Smt. Dhapo Devi was a forged and fabricated document. I hold that the Will was validly proved and exhibited as Ex.PW1/1 and therefore probate was rightly granted. The appeal accordingly being without merit is dismissed, leaving the parties to bear their own costs.