

(2013) 04 DEL CK 0368

Delhi High Court

Case No: FAO (OS) 54 of 2012

Sushoban Luthra and Another

APPELLANT

Vs

Major Ravindra Mohan Kapur
and Others

RESPONDENT

Date of Decision: April 25, 2013

Acts Referred:

- Registration Act, 1908 - Section 52, 52(1)(c), 53, 62

Citation: (2013) 204 DLT 255 : (2013) 2 ILR Delhi 1590

Hon'ble Judges: Sanjeev Sachdeva, J; Sanjay Kishan Kaul, J

Bench: Division Bench

Advocate: Rajiv Bahl and Mr. Pankaj Aggarwal, for the Appellant; Sanjeev Anand, Advocate and Ms. Anubha Surana, for the Respondent

Final Decision: Dismissed

Judgement

Sanjeev Sachdeva, J.

This is an appeal arising out of judgment dated 12.7.2011. By the impugned judgment, the objections filed by the appellants to the probate petition filed by the respondents in respect of the Will dated 25.10.2000 executed by late Smt. Shakuntala Kapur have been dismissed and the probate has been granted of the said Will. The appellants herein are the children of the pre-deceased daughter of late Smt. Shakuntala Kapur and the respondents (the probate petitioners) are the sons of late Smt. Shakuntala Kapur. The learned counsel for the appellants has impugned the judgment on the following grounds:

(i) The Will has been executed in suspicious circumstances which are evident from:

(a) The signatures of the Sub-Registrar on the original Will and on the certified copy of the Will do not tally;

- (b) The signatures of the attesting witnesses are not in the same order in the original Will and in the certified copy of the Will;
- (c) The evidence of PW-2 is unreliable as there are contradictions and both the Wills are not identical, as on the one of the Wills no date has been mentioned, whereas on the other date has been mentioned; and
- (d) That the certified copy should be the replica of the Original Will.

- (ii) There was undue influence in the execution of the Will in as much as the husband of late Smt. Shakuntala Kapur was present at the time of execution and registration of the Will and;
- (iii) The Certified Copy of the Will produced by the Respondents herein does not satisfy the requirements of Section 52(1)(c) of the Registration Act, 1908 and Rule 29 of the Delhi Registration Rules.

2. We had summoned the original suit record and have examined the evidence led and the documents proved on record of the case.

3. The respondents have produced three witnesses in support of their Petition for grant of probate. On the other hand, the appellants have not led any evidence in support of the objections filed by them and have neither filed their affidavits by way of evidence nor have they entered the witness box.

4. We find no merit in the submission of the learned counsel for the appellants with respect to the alleged suspicious circumstances in the execution of the Will. We have examined the original Will (Ex. PW2/DX) and the certified copy (EX. PW-1/2) produced on records of the case. The original Will (Ex. PW2/DX) bears the signatures of the Sub-Registrar at three places on the back of page 1 and at one place on the back of the last page of the Will. On the back of the last page of the certified copy of the Will (EX-PW1/2), the signatures that appear of the Sub-Registrar tallies with the signatures of the Sub-Registrar on the original Will. No doubt, the signatures on the back of the first page of the certified copy appear to be somewhat different but in our view nothing really turns on it because the original Will produced and duly exhibited in the records of the case bears the signatures of the Sub-Registrar and the last page of the certified copy of the Will also bears the same signatures. The appellants have led no evidence in support of this plea raised by them. Further when the officer of the Sub-Registrar appeared in the Witness Box, not even a suggestion was put to him in his cross-examination. This submission of the learned counsel for the appellant being unsustainable is hereby rejected.

5. We also find no merit in the submission of the learned counsel for the appellants that the Will has been executed in suspicious circumstances as the signatures of the attesting witnesses are not in the same order in the original Will and in the certified copy. There is no doubt that order of signing of the witnesses in the original Will and in the certified copy of the Will is not same, the explanation rendered by the counsel

for the respondents is that where the Will is prepared in duplicate and both the Wills are given simultaneously to the witnesses to sign and then exchanged between the attesting witnesses for their signatures, the order of signatures of the attesting witnesses may interchange. We find that the explanation is cogent, plausible and corroborated by the evidence of the witnesses of the respondents (the probate petitioners). This submission of the learned counsel for the appellant, being unsustainable, is rejected.

6. In the Impugned Judgment, the learned Single Judge has returned findings as under:

20. I have carefully examined the original Will and the certified copy of the Will. The submission made by counsel for the objector have no force. On perusing with the Wills with the naked eye it is evidence that the certified copy is a photocopy of the original Will and the typing on both the Wills - the font, typing, the end of the page and end of each of paragraph - are identical. The contents of the Wills are also identical. While the original Will bears the signatures of the Sub-Registrar, the certified copy does not bear the signatures of the Sub-Registrar, but the word "sd/-" (signed) has been scrolled and thus, it cannot be said that the signatures of the Sub-Registrar vary in both the Wills. The certified copy has not been signed at all. The objection so taken is baseless and unfounded. There is no doubt that order of signing of the witnesses in both the Wills is not the same. The explanation rendered by Mr. Anand, counsel for the petitioner is cogent and plausible and is corroborated by the evidence of PW-2, who has stated that both the Wills were signed in the presence of Sub-Registrar, hence, merely because the witnesses have not signed in the same order would not make the Will invalid or fabricated, especially in view of the evidence of PW-2, which is truthful and reliable. The evidence of the witnesses is duly supported by the evidence of PW-3, record keeper from the office of Sub-Registrar. No doubt the date of 25.10.2000 is not mentioned on the certified copy of the Will, but having regard to the fact that the Will was registered on the same date, non appearance of the date on the certified copy has no bearing in the present matter.

21. The contradictions pointed out by counsel for the Objectors does not go to the root of the matter, as PW-2 who was more than 80 years of age at the time of recording of his evidence has clearly stated that he had signed only one Will and when he was shown the original Will and the certified copy, he has rightly and truthfully identified the signatures on both the Wills.

22. It is clear from the facts noted above and evidence on record that PW-2 Mr. Mehra had correctly deposed that he had signed only will of late Smt. Shakuntla Kapur dated 25.10.2000 as a consequence of which neither does the objection raised by the objector regarding the suspicious circumstances surrounding the certified copy of the Will go to the root of the matter, nor can it be entertained by this Court.

We agree with the findings of the Learned Single Judge and find no reason to take a different view and as such the submission of the learned counsel for the appellants with regard to suspicious circumstances is rejected.

7. The submission of the learned counsel for the appellants that the presence of the husband of late Smt. Shakuntala Kapur at the time of execution and registration of the Will amounted to undue influence in the execution of the Will, has no merit and is liable to be rejected. The Husband of late Smt. Shakuntala Kapur is a Class-I legal heir and in the absence of a Will would have inherited 1/4th share in the estate of late Smt. Shakuntala Kapur. By the Will dated 25.10.2000, Smt. Shakuntala Kapur had given only a life interest to her husband in one of the properties. The fact that the beneficiary receives a share under a Will less than what he would have inherited in the absence of the Will dispels the plea of undue influence. The submission of the learned counsel for the appellants that the presence of husband of late Smt. Shakuntala Kapur at the time of execution and registration of Will amounts to undue influence merits outright rejection. In the Indian Society, it is quite normal for a wife to execute a Will in consultation and in presence of her husband and vice-versa. The mere fact that the husband was present at the time of execution and registration of the Will would not per se establish that undue influence was used in the execution of the Will. To substantiate the plea of undue influence, the objector would have to lead cogent evidence; in the present case, there is no such evidence on record on behalf of the Objectors.

8. The submission of the learned counsel for the appellants that the Certified Copy of the Will produced by the Respondents herein does not satisfy the requirements of Section 52(1)(c) of the Registration Act, 1908 (for short "the said Act") and Rule 29 of the Delhi Registration Rules (for short, "the said Rules") also merits outright rejection.

9. Section 52(1)(c) of the said Act, as amended for the State of Delhi, lays down as under:

Section 52 Duties of registering officers when document presented.

...

...

(c) Subject to the provisions contained in section 62, a copy of every document admitted to registration shall, without unnecessary delay, be pasted in the book appropriated therefor according to the order of admission of the document.

10. Rule 29 of the said Rules lays down as under:

29. Authentication of entries in Register Books-

Every copy pasted in Book I or Additional Book I, III or IV shall be a carbon copy of the original and shall be carefully compared with it; all interlineations, blanks,

erasures or alterations which appear in the original shall be shown in the copy pasted in the Book. The Registering officer shall satisfy himself that this has been done, verifying by his signature or initial. The Registering Officer shall also see that the copy has been pasted in the book to which it belongs, that the number offered to it is that which it ought to bear in order to maintain the consecutive series required by section 53 of the Act and that the book, the volume and the page entered in the certificate of registration are correctly stated. Copies of endorsements shall also be initialed and signed by the Registering Officer. A duplicate copy shall also be signed by the Registering Officer. A duplicate copy shall also be signed by the Registering Officer.

11. On examination of the original Will (Ex. PW2/DX) and the certified copy of the Will (EX. PW-1/2) it is seen that the contents of both the Wills are identical. The submission of the learned counsel that in the office of the Sub-Registrar, a photocopy of the duly executed original Will has to be pasted in the records of the Sub-Registrar merits rejection inasmuch as neither Section 52(1)(c) of the said Act nor Rule 29 of the said Rules stipulate pasting of a photocopy of the duly executed original Will. What Section 52(1)(c) of the said Act and Rule 29 of the said Rules stipulate is that a copy of the Original has to be pasted in the Book maintained in the office of the Sub-Registrar. If a Will is prepared in duplicate either by using a carbon or by printing the same twice from a computer and signed in duplicate and then the carbon copy duly signed in original or the computer printout duly signed in original is pasted in the records of the Sub-Registrar, it would satisfy the requirements of both Section 52(1)(c) of the said Act, 1908 and Rule 29 of the said Rules.

12. In the present case, since the certified copy of the Will is identical to the original Will, the requirements of both Section 52(1)(c) of the said Act and Rule 29 of the said Rules have been duly complied with. We may further note that the appellants have neither led any evidence on this issue nor have they chosen to cross-examine PW3, the officer from the office of the Sub-Registrar on this issue. Further, a Will is not compulsorily registerable under the said Act and, thus, a mere irregularity in the certified copy would not render the original Will invalid more so in view of the fact that the Original Will has been duly produced and proved on the records of the case. In view of the above, we find no infirmity in the impugned order and find no merit in the submissions of the learned counsel for the appellant. The appeal is, therefore, dismissed leaving the parties to bear their own costs.