

2023 LiveLaw (SC) 809

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

ABHAY S. OKA; J., SANJAY KAROL; J.

CIVIL APPEAL NO. 3351 OF 2014 (Arising out of SLP(C) NO.17115/2010) 21st September, 2023

MEENA PRADHAN & ORS. *versus* KAMLA PRADHAN & ANR.

Indian Succession Act, 1925 - Section 63 and 68 - Principles to prove validity and execution of will – explained. (Para 10)

Will - Apart from statutory compliance, broadly it has to be proved that (a) the testator signed the Will out of his own free Will, (b) at the time of execution he had a sound state of mind, (c) he was aware of the nature and effect thereof and (d) the Will was not executed under any suspicious circumstances. (Para 11)

Will - A Will is an instrument of testamentary disposition of property. It is a legally acknowledged mode of bequeathing a testator's property during his lifetime to be acted upon on his/her death and carries with it an element of sanctity. It speaks from the death of the testator. Since the testator/testatrix, at the time of testing the document for its validity, would not be available for deposing as to the circumstances in which the Will came to be executed, stringent requisites for the proof thereof have been statutorily enjoined to rule out the possibility of any manipulation. (Para 9)

For Appellant(s) Dr. Ashutosh Garg, AOR

For Respondent(s) Mr. Sumeer Sodhi, AOR Ms. Shreya Singh, Adv.

J U D G M E N T

SANJAY KAROL, J.

1. The facts, in brief, giving rise to the present appeal are as under: There was one Bahadur Pradhan who married Meena Pradhan (Defendant-2/Appellant No.1 herein) with whom he had two children namely, Ravi Kumar (Defendant-3/ Appellant No.2 herein) and Ku. Sushma (Defendant-4/Appellant No.3 herein). Allegedly, he divorced his first wife and solemnised another marriage with Kamla Pradhan (Plaintiff-1/Respondent No.1 herein) who gave birth to a child namely Ku. Ritu (Plaintiff-2/Respondent No.2 herein). Bahadur Pradhan (hereinafter referred to as 'testator'), seven days before his death (07.08.1992), executed a Will on 30.07.1992 in the presence of two witnesses namely Lok Bahadur Thapa (not examined) and Suraj Bahadur Limboo (PW-2).

2. After the death of the testator, the Plaintiffs filed a case for receiving the testator's dues wherein a succession certificate was issued in favour of Respondent No.1 by VI Additional District Judge, Jabalpur vide order dated 05.07.1995. Proceedings stood concluded with the reversal of such an order by the High Court of Madhya Pradesh in terms of order dated 17.11.1995, quashing the entire proceedings, observing the authenticity and genuineness of the Will, in existence to be adjudicated in appropriate proceedings.

3. Pursuant to this order of the High Court, proceedings under Section 276 of the Indian Succession Act 1925 (hereinafter referred to as 'the Succession Act') for a grant of Probate or Letter of Administration were initiated by both the Plaintiffs. The Defendants challenged the execution of the Will in favour of the Plaintiffs, also raising an objection about the testator having married Plaintiff No.1.

4. The Civil Court, Jabalpur, MP vide order dated 11.12.2001, in Succession Case No. 22/98 while relying on the testimony of an attesting witness, namely, Suraj Bahadur Limboo (PW2) upheld the validity of the Will in favour of the beneficiaries and accordingly issued Letter(s) of Administration. The said order was challenged by the Defendants. The High Court in repelling the Defendant's contention of the Will being a forged document, by discussing the relevant statutory provisions and decisions of this Court, affirmed the order of the Civil Court.

5. Hence, the instant Appeal against the final judgment dated 25.03.2010 in Misc. Appeal No. 382 of 2002 passed by the High Court of Madhya Pradesh, confirming the order of the Civil Court in Succession Case No.22/98 wherein it upheld the validity of the Will and issued Letters of Administration.

6. The issue that arises for our consideration is whether there are sufficient grounds that warrant interference with the concurrent findings of the fact, upholding validity of a Will.

7. Before delving into the facts of the case, it is pertinent to reproduce the relevant provisions dealing with the validity and execution of the Will.

“Section 63 of the Indian Succession Act, 1925

Execution of unprivileged wills- Every testator, not being a soldier employed in an expedition or engaged in actual warfare, or an airman so employed or engaged, or a mariner at sea, shall execute his Will according to the following rules:-

(a) The testator shall sign or shall affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction.

(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a Will.

(c) The Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgement of his signature or mark, or the signature of such other person; and each of the witnesses shall sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

Section 68 of Indian Evidence Act 1872

Proof of Execution of document required by law to be attested- If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence: xxx”

8. Thus, a bare reading of the above-mentioned provisions would show that the requirements enshrined under Section 63 of the Succession Act have to be categorially complied with for the execution of the Will to be proven in terms of Section 68 of the Evidence Act.

9. A Will is an instrument of testamentary disposition of property. It is a legally acknowledged mode of bequeathing a testator's property during his lifetime to be acted upon on his/her death and carries with it an element of sanctity. It speaks from the death

of the testator. Since the testator/testatrix, at the time of testing the document for its validity, would not be available for deposing as to the circumstances in which the Will came to be executed, stringent requisites for the proof thereof have been statutorily enjoined to rule out the possibility of any manipulation.

10. Relying on **H. Venkatachala Iyengar v. B.N. Thimmajamma, 1959 Supp (1) SCR 426** (3-Judge Bench), **Bhagwan Kaur v. Kartar Kaur, (1994) 5 SCC 135** (3-Judge Bench), **Janki Narayan Bhoir v. Narayan Namdeo Kadam, (2003) 2 SCC 91**(2-Judge Bench) **Yumnam Ongbi Tampha Ibema Devi v. Yumnam Joykumar Singh, (2009) 4 SCC 780** (3-Judge Bench) and **Shivakumar v. Sharanabasappa, (2021) 11 SCC 277** (3-Judge Bench), we can deduce/infer the following principles required for proving the validity and execution of the Will:

i. The court has to consider two aspects: firstly, that the Will is executed by the testator, and secondly, that it was the last Will executed by him;

ii. It is not required to be proved with mathematical accuracy, but the test of satisfaction of the prudent mind has to be applied.

iii. A Will is required to fulfil all the formalities required under Section 63 of the Succession Act, that is to say:

(a) 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 the said signature or affixation shall show that it was intended to give effect to the writing as a Will;

(b) It is mandatory to get it attested by two or more witnesses, though no particular form of attestation is necessary;

(c) Each of the attesting witnesses must have seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of such signatures;

(d) Each of the attesting witnesses shall sign the Will in the presence of the testator, however, the presence of all witnesses at the same time is not required; iv. For the purpose of proving the execution of the Will, at least one of the attesting witnesses, who is alive, subject to the process of court, and capable of giving evidence, shall be examined;

v. The attesting witness should speak not only about the testator's signatures but also that each of the witnesses had signed the will in the presence of the testator;

vi. If one attesting witness can prove the execution of the Will, the examination of other attesting witnesses can be dispensed with;

vii. Where one attesting witness examined to prove the Will fails to prove its due execution, then the other available attesting witness has to be called to supplement his evidence;

viii. Whenever there exists any suspicion as to the execution of the Will, it is the responsibility of the propounder to remove all legitimate suspicions before it can be accepted as the testator's last Will. In such cases, the initial onus on the propounder becomes heavier.

ix. The test of judicial conscience has been evolved for dealing with those cases where the execution of the Will is surrounded by suspicious circumstances. It requires to consider factors such as awareness of the testator as to the content as well as the consequences, nature and effect of the dispositions in the Will; sound, certain and disposing state of mind

and memory of the testator at the time of execution; testator executed the Will while acting on his own free Will;

x. One who alleges fraud, fabrication, undue influence et cetera has to prove the same. However, even in the absence of such allegations, if there are circumstances giving rise to doubt, then it becomes the duty of the propounder to dispel such suspicious circumstances by giving a cogent and convincing explanation.

xi. Suspicious circumstances must be 'real, germane and valid' and not merely 'the fantasy of the doubting mind'¹. Whether a particular feature would qualify as 'suspicious' would depend on the facts and circumstances of each case. Any circumstance raising suspicion legitimate in nature would qualify as a suspicious circumstance for example, a shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the Will under which he receives a substantial benefit, etc.

11. In short, apart from statutory compliance, broadly it has to be proved that (a) the testator signed the Will out of his own free Will, (b) at the time of execution he had a sound state of mind, (c) he was aware of the nature and effect thereof and (d) the Will was not executed under any suspicious circumstances.

12. Coming to the facts of the case, a careful perusal of the relevant material on record and applying the provisions and the case laws it is evident that the Will was duly executed by the testator in the presence of witnesses out of his free Will in a sound disposing state of mind and the same stands proven through the testimony of one of the attesting witnesses, namely, Suraj Bahadur Limboo who was examined as PW-2 by the Civil Court. This witness categorically states that the testator executed the Will in question and, both he and the testator signed the Will in the presence of each other.

13. As far as allegations made by the defendants are concerned, we are of the opinion that there is no evidence on record to conclude that the deceased was not in a fit or stable mental condition at the time of execution of a Will, or that a Will was executed under suspicious circumstances, or the presence of any element of undue influence.

14. Thus, in the case at hand, we are of the opinion that both the courts below have rightly noted that the relevant provisions were complied with, and given the well-reasoned order upholding the validity of the Will, the same does not warrant interference of this court.

15. As far as the allegations of second marriage and bigamy are concerned, we refrain from entertaining such submissions as the same is not a relevant factor in deciding the main *lis*, which is confined to the validity of the Will.

16. This Appeal is bereft of any merit and hence dismissed. Since the validity of the Will stands proven according to settled principles of law, consequential benefits be disbursed accordingly.

17. Interlocutory Application(s) if any, stand disposed of. No order as to costs.

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¹ Shivakumar (*supra*)