

SUPREME COURT OF INDIA

Bench: Justices C.T. Ravikumar and Sanjay Kumar

Date of Decision: October 6, 2023

CIVIL APPELLATE JURISDICTION**CIVIL APPEAL NO. 8172 OF 2009**

Dhani Ram (died) through LRs. & others

... Appellants

Versus

Shiv Singh

... Respondent

Sections, Acts, Rules, and Article:

Section 68 of the Indian Evidence Act, 1872

Section 63 and Section 71 of the Indian Succession Act, 1925

Section 15 of the Hindu Succession Act, 1956

Indian Registration Act, 1908

Subject: Disputed Will and Intestate Succession - Contradictory statements of attesting witnesses – Failure to establish execution of the Will in accordance with legal requirements.

Headnotes:

Civil Appeal – Disputed Will – Allegation of Will executed by Leela Devi in favor of Dhani Ram – Trial Court disbelieving the Will – Appellate Court reversing the judgment – High Court reversing the Appellate Court’s decision – Appellant filed special leave appeal – Examination of attesting witnesses – Contradictory statements of attesting witnesses – Failure to establish

execution of the Will in accordance with legal requirements – Compliance with Sections 68 and 71 of the Evidence Act and Section 63 of the Succession Act not established – Appellant fails to prove the execution of the Will – Intestate succession under Section 15 of the Act of 1956 upheld – Appeal dismissed. [Para 1-28]

Referred Cases:

Rani Purnima Debi and another vs. Kumar Khagendra Narayan Deb and another AIR 1962 SC 567 = [1962] 3 SCR 195

Janki Narayan Bhoir vs. Narayan Namdeo Kadam (2003) 2 SCC 91

Lalitaben Jayantilal Popat vs. Pragnaben Jamnadas Kataria and others (2008) 15 SCC 365

Shyamal Ghosh vs. State of West Bengal (2012) 7 SCC 646

J U D G M E N T

SANJAY KUMAR, J

1. I.A. No. 151091 of 2023 was filed for deletion of the name of deceased appellant No. 2, the widow of Dhani Ram, from the array of parties. This application is ordered as the sons of Dhani Ram and deceased appellant No. 2 have already been brought on record. Registry shall make necessary changes in the cause title before placing this final judgment in the public domain and/or issuing copies thereof.
2. Leela Devi, also referred to as Leela Wati, died on 10.12.1987. Her husband, Sohan Lal, had predeceased her. Dhani Ram, the son of Leela Devi's brother, claimed that she executed a registered Will bequeathing to him the properties left by late Sohan Lal. Shiv Singh, the son of Sohan Lal's brother, instituted Civil Suit No. 200/1 of 1990 on the file of the learned Senior Sub Judge, Solan, Himachal Pradesh, challenging the Will executed by Leela Devi, under which Dhani Ram claimed entitlement to the properties that originally belonged to Sohan Lal.

3. By judgment dated 30.08.1997, the Trial Court decreed the suit, disbelieving the Will put forth by Dhani Ram. In consequence, the mutation effected by the authorities on the strength of the said Will was also set aside. Shiv Singh was held entitled to a decree of possession, as he was the rightful owner of the suit properties, and Dhani Ram was permanently enjoined from causing interference therewith. Aggrieved thereby, Dhani Ram and the other defendants filed Civil Appeal No. 63-S/13 of 1997 before the learned District Judge, Solan, Himachal Pradesh. By judgment dated 12.05.1998, the Appellate Court reversed the judgment and decree of the Trial Court. It held that the Will stood proved and that there were no suspicious circumstances surrounding it. The suit filed by Shiv Singh was accordingly dismissed with costs.
4. Thereupon, Shiv Singh filed Regular Second Appeal No. 398 of 1998 before the Himachal Pradesh High Court. The second appeal was allowed by the High Court, *vide* judgment dated 18.03.2009, restoring the judgment and decree of the Trial Court. Aggrieved by this turn of events, Dhani Ram filed this appeal by special leave.
5. By order dated 30.07.2009, this Court stayed the operation and implementation of the judgment under appeal.
6. Admitted facts, to the extent relevant, may now be taken note of. Sohan Lal and his brother, Devi Ram, succeeded to the ancestral properties left by their father, Giridhari Lal. Sohan Lal had no issues, though it is stated that he had two wives, Leela Devi and Draupadi. The existence and status of Draupadi is disputed but it is of no consequence presently. Devi Ram had two sons, Balbir Singh and Shiv Singh, viz., the respondent herein, who had filed the suit. Balbir Singh died on 26.04.1985. Sohan Lal died intestate and before his death, so did Draupadi, supposedly one of his wives. Therefore, Leela Devi alone inherited Sohan Lal's share in the ancestral properties by intestate succession. In the ordinary course, if Leela Devi had also died intestate, Shiv Singh, being the sole legal heir of her husband, would have succeeded to the

properties under Section 15(1)(b) and Section 15(2)(b) of the Hindu Succession Act, 1956 (for brevity, 'the Act of 1956'). However, Dhani Ram, the son of Leela Devi's brother, claimed the said properties under the Will allegedly executed by Leela Devi on 27.10.1987, which was registered thereafter on 03.11.1987. On the strength thereof, Dhani Ram also got his name mutated in the records in relation to these properties. Having come to know of the same, Shiv Singh initiated the subject litigation and ultimately succeeded before the Himachal Pradesh High Court.

7. The case, therefore, turns upon the Will said to have been executed by Leela Devi. If the said Will is found to be legal and valid, Dhani Ram would succeed to Sohal Lal's properties. If not, Shiv Singh would be the successor to these properties under Section 15 of the Act of 1956.
8. Before the Trial Court, Shiv Singh examined himself as PW1, apart from examining three other supporting witnesses. Dhani Ram examined himself as DW1 in addition to examining Lok Nath Attri, an attesting witness to the Will, as DW-2. Documentary evidence was also led. The contentious Will was marked as Ex. DW-2/A. According to Dhani Ram, it was executed by Leela Devi on 27.10.1987 at Kasauli. It was scribed by Ghanshyam Dutt Sharma, a document writer, in the presence of witnesses, Lok Nath Attri (DW2) and Chaman Lal (PW4). The Will was registered subsequently on 03.11.1987 by the Sub-Registrar, Kasauli. Dhani Ram claimed that Leela Devi was looked after by him and his wife during the last stages of her life. This fact was also confirmed by PW2 and PW3. According to Dhani Ram, being happy with their services, Leela Devi executed the Will in his favour. 9. The Trial Court rightly opined that mere registration of the Will would not be sufficient to prove its validity, as its lawful execution necessarily had to be proved in accordance with Section 68 of the Indian Evidence Act, 1872 (for brevity, 'the Evidence Act'), and Section 63 of the Indian Succession Act, 1925 (for brevity, 'the Succession Act'). Thereupon, the Trial Court found that the evidence of the attesting witnesses to the Will, viz., Lok Nath Attri (DW-2) and Chaman Lal (PW-4), was contradictory as they did not speak to the same effect. In these

circumstances, the Trial Court held that valid execution of the Will was not proved.

- 10.** On the contrary, in appeal, the Appellate Court held to the effect that Leela Devi was of sound mind despite her advanced age of 70 years and that it was natural for her to execute a Will in favour of her brother's son, Dhani Ram, as he and his family had cared for her well-being during her twilight years. Further, the Appellate Court was inclined to overlook the discrepancies in the evidence of the two attesting witnesses to the Will, viz., Lok Nath Attri (DW-2) and Chaman Lal (PW-4). It is on this basis that the Appellate Court reversed the findings of the Trial Court.
- 11.** However, the High Court, in exercise of second appellate jurisdiction, took a different view. The High Court was of the opinion that as Dhani Ram had taken a keen interest in the execution and registration of the Will, as noted by both the Courts below, that would constitute a reason in itself to entertain some suspicion and the mere registration of the Will would not suffice to dispel the suspicious circumstances surrounding it. The High Court further held that discrepancies in the evidence of the attesting witnesses to the Will were of significance and the sum effect thereof was that the very execution of the Will was not proved in terms of Section 68 of the Evidence Act and Section 63 of the Succession Act. In consequence, the High Court refused to act upon the said Will and disallowed Dhani Ram's claim based thereon.
- 12.** Perusal of the disputed Will reflects the following features – It was made on 27.10.1987, as recorded in the first paragraph and also certified on the last page by Ghanshyam Dutt Sharma, the document writer, who affixed his signature with the date 27.10.1987 thereunder. The Will is only two pages in length. It was scribed in English and Leela Devi affixed her signature as 'Leela' in Hindi on each page. She affixed her signature on the first page above an 'x' mark. The attesting witnesses' signatures are not found on the first page. On the second page, the signatures of Leela Devi and the attesting witnesses appear at the end of the document but the placement of the attesting witnesses' signatures is not consistent, as one signed above his name (Lok Nath Attri) while the other (Chaman Lal) signed under his name. The attesting witnesses' signatures also appear on the back of the first page at the bottom. Lok Nath Attri's signature is on the left side corner while

Chaman Lal's is on the right side corner and Leela Devi's signature is in between. The Sub-Registrar, Kasauli, noted in Hindi, above these signatures, that the contents of the document had been read over and explained to the testatrix, which were heard, understood and admitted by her; that the presenter of the document was identified by Lok Nath Attri, Pradhan of the Gram Panchayat, Rouri; and that he, the Sub-Registrar, personally knew Witness No. 2 and, therefore, the Will was registered. The Sub-Registrar also noted that the document was presented for registration by Leela Devi between 12 and 1 pm on 03.11.1987.

- 13.** These being the contents of the disputed Will, it would be apposite to examine the depositions of the two attesting witnesses at this stage. Lok Nath Attri deposed as DW-2 on 19.06.1993. He said that he was the Pradhan of Rouri Panchayat. He stated that he knew Leela Devi, the widow of Sohan Lal, and that, in his presence, she executed the Will (Ex. DW-2/A). He again stated that she signed it in his presence and in the presence of Chaman Lal. He stated that he recognized the signature of Leela Devi and identified her signature and his own signature in the document. He stated that he did not remember the date on which this Will was registered in Tehsil Kasauli and who had presented it. He went on to state that Leela Devi went inside and he, along with Chaman Lal, together went with her. According to him, the Tehsildar explained the Will to Leela Devi and asked her as to why she had made it. Thereupon, Leela Devi stated that she did not have any children and as Dhani Ram and his wife had looked after her, she had executed the Will in their favour.
- 14.** In his cross-examination, Lok Nath Attri stated that he worked in Mohan Meakin at Kasauli. He said that Leela Devi often used to meet him and asked him to prepare a Will but he had told her that it would be better if she got the Will registered. He reiterated that Leela Devi often used to meet him for some work or the other, but he did not know whether she was seriously ill and had stayed in the hospital. He denied the suggestion that by taking advantage of

her weak mental condition, the Will was got prepared. He then stated that his impression was that Leela Devi might have been alive for 2 - 3 years after executing the Will. He also stated that his meetings with Leela Devi went on in the same way as before even after execution of the Will. He stated that he received a telephone call at his office that Leela Devi had come to Kasauli and she wanted a Will to be made. This telephone call was received by him at 10.30 pm and he immediately started from there. When he reached Kasauli, Leela Devi told him that she had to get the Will made and Chaman Lal was already there. For getting the Will made and registered, Lok Nath Attri said that it took 2 hours. He went on to state that he did not know how much time it took to get it registered. He also could not say whether the Will was made before lunch or after. According to him, he did not need to take leave from his office for doing panchayat work and this facility was given to him by his Company. He stated that he orally informed his manager whenever he had to go for panchayat work. He admitted that under the Panchayat Act and the Government's instructions, he was not under any duty to attest Wills but whenever any person from the panchayat wanted to execute a Will, then he would participate in his official capacity. He denied the suggestion that Chaman Lal had signed the document earlier and he used his influence to benefit Dhani Ram in getting the Will made and getting it registered.

- 15.** After completion of Lok Nath Attri's deposition, Dhani Ram gave up examination of Chaman Lal on the ground that it was unnecessary. This was recorded by the Trial Court on 19.06.1993. Thereupon, Shiv Singh examined Chaman Lal as PW-4 on 21.11.1994. Chaman Lal stated thus:

About 7 years previously, he had gone to the Government Hospital at Kasauli to get medicine and Dhani Ram met him while he was taking it. Dhani Ram told him that his signatures were required on some papers and he affixed his signatures. He identified his signatures in Ex. DW-2/A. He further stated that when he put his signatures, no other proceedings took place. He said that when he signed the papers, he did not know any other person there except Dhani Ram. He asserted that Leela Devi, Lok Nath Attri and Ghanshyam Das did not sign in his presence. He also asserted that what was written in Ex. DW-2/A was neither explained to him nor was it explained to anybody else in

his presence. He claimed that he affixed his signatures in the document and left the place.

- 16.** In his cross-examination, Chaman Lal stated that his signatures in Ex. DW-2/A were made on the same day and at the same time. He stated that his signatures on the document were made on 03.11.1987 in the Tehsil. He, however, said that he did not go to the office of the Tehsildar but signed the document and came back from outside the Tehsil. He stated that he did not go inside the Tehsil. He denied that, after making Ex. DW-2/A Will, Leela Devi appeared before the Tehsildar (Sub-Registrar) with him and Lok Nath Attri. He further said that he did not know that Leela Devi signed Ex. DW-2/A in Lok Nath Attri's and his presence after admitting it as correct.
- 17.** Bare perusal of the statements made by these two attesting witnesses demonstrates that they are not on same page. Lok Nath Attri (DW-2) claimed that Leela Devi signed the Will in his presence and in the presence of Chaman Lal. However, and most significantly, he did not state that Chaman Lal and he affixed their signatures in the document in the presence of Leela Devi. On the other hand, Chaman Lal claimed that he put his signatures at the bottom of the pages at the request of Dhani Ram and that he never saw Leela Devi affix her signatures in the document.
- 18.** In this regard, it would be apt to note the essential requirements in law to prove a Will. Section 68 of the Evidence Act reads as under:
- “68. 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:
Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.”
- 19.** Section 63 of the Succession Act prescribes the mode and method of proving a Will and, to the extent relevant, it reads as under: -

“63. 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).

(b).

(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 acknowledgment 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.”

20. It would also be necessary to take note of Section 71 of the Evidence Act. This provision states as follows:

“71. Proof when attesting witness denies the execution. If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence.”

21. It is well settled that mere registration would not sanctify a document by attaching to it an irrebuttable presumption of genuineness.

The observations of this Court in *Rani Purnima Debi and another vs. Kumar Khagendra Narayan Deb and another*¹, which were referred to by the Himachal Pradesh High Court, are of guidance in this regard and are worthy of extraction. These observations read as under:

“There is no doubt that if a Will has been registered, that is a circumstance which may, having regard to the circumstances, prove its genuineness. But the mere fact that a Will is registered will not by itself be sufficient to dispel all suspicion regarding it where suspicion exists, without submitting the evidence of registration to a close examination. If the evidence as to registration on a close examination reveals that the registration was made in such a manner that it was brought home to the testator that the document of which he was admitting execution was a Will disposing of his property and thereafter he admitted its execution and signed it in token thereof, the registration will dispel the doubt as to the genuineness of the Will. But if the evidence as to registration shows that it was done in a perfunctory manner, that the officer registering the Will did not read it over to the testator or did not bring home to him that he was admitting the execution of a Will or did not satisfy himself in some other way (as, for example, by seeing the testator reading the Will) that the testator knew that it was a Will the execution of which he was admitting, the

¹AIR 1962 SC 567 = [1962] 3 SCR 195

fact that the Will was registered would not be of much value. It is not unknown that registration may take place without the executant really knowing what he was registering. Law reports are full of cases in which registered Wills have not been acted upon Therefore, the mere fact of registration may not by itself be enough to dispel all suspicion that may attach to the execution and attestation of a Will; though the fact that there has been registration would be an important circumstance in favour of the Will being genuine if the evidence as to registration establishes that the testator admitted the execution of the Will after knowing that it was a Will the execution of which he was admitting.”

- 22.** We may also refer to ***Janki Narayan Bhoir vs. Narayan Namdeo Kadam***², wherein this Court held that, to prove that a Will has been executed, the requirements in clauses (a), (b) and (c) of Section 63 of the Succession Act have to be complied with. It was pointed out that the most important point is that the Will has to be attested by two or more witnesses and each of these witnesses must have seen the testator sign or affix his mark to the Will or must have seen some other person sign the Will in the presence of and by the direction of the testator or must have received from the testator a personal acknowledgment of his signature or mark or of the signature or mark of such other person and each of the witnesses has to sign the Will in the presence of the testator. It was further held that, a person propounding a Will has got to prove that the Will was duly and validly executed and that cannot be done by simply proving that the signature on the Will was that of the testator, as the propounder must also prove that the attestations were made properly, as required by Section 63(c) of the Succession Act. These observations were affirmed and quoted with approval by this Court in its later judgment in ***Lalitaben Jayantilal Popat vs. Pragnaben Jamnadas Kataria and others***³.
- 23.** Viewed in the context of the legal requirements and the law laid down by this Court, we find that neither of the attesting witnesses in this case fulfilled the mandate of Section 63(c) of the Act of 1925 to prove the Will. Though Lok Nath Attri claimed that Leela Devi affixed her signatures in the Will in their

²(2003) 2 SCC 91

³(2008) 15 SCC 365

presence, which was vehemently denied by the other attesting witness, Chaman Lal, the fact remains that Lok Nath Attri also did not state that he affixed his signatures in the Will in the presence of Leela Devi. This is one of the compulsory requisites of Section 63(c) of the Succession Act.

24. We may also note that Lok Nath Attri claimed that he had good relations with Leela Devi and that she would meet him regularly for some work or the other. Having stated so, he surprisingly said that Leela Devi may have lived for 2 - 3 years after the execution of the Will. However, Leela Devi allegedly executed the Will on 27.10.1987, got it registered on 03.11.1987 and expired on 10.12.1987. Therefore, she lived for barely a month and a half after the execution of the Will. The fact that Lok Nath Attri did not recall this crucial detail casts any amount of doubt on his credibility.
25. It is difficult to believe that Chaman Lal would have blindly affixed his signatures in a document upon the mere asking of Dhani Ram without knowing its consequences. However, even if it is accepted that Chaman Lal is not being honest about his role in the execution of the Will (Ex. DW-2/A), the fact still remains that neither attesting witness spoke of the execution of the said Will in terms of the prescriptions in Section 63(c) of the Succession Act. Further, when the Will itself demonstrates that it was made on 27.10.1987 but was registered on 03.11.1987, Lok Nath Attri's statement that for getting the Will made and registered it took 2 hours is equally astonishing. This statement leads to the inference that the making of the Will and its registration took place on the same day. Notably, he could not even recall whether it was done before lunch or after. No doubt, in ***Shyamal Ghosh vs. State of West Bengal***⁴, this Court held that where evidence is given after a lapse of several years in the context of attestation of a Will, contradictions of minor nature should not be taken to be suspicious circumstances, as memory would fade after the lapse of a long period of time. However, the evidence of Lok Nath

⁴(2012) 7 SCC 646

Attri does not inspire confidence on grounds more than one. Therefore, this *ratio* does not suffice to cure all the defects in his deposition, which render him totally uncreditworthy. Further, as already noted, he did not state that he signed the Will in the presence of Leela Devi, which is fatal to proving the execution of the Will in terms of Section 63(c) of the Succession Act.

- 26.** Section 68 of the Evidence Act requires at least one attesting witness to the Will to prove its execution in terms of Section 63 of the Succession Act, but it is clear that neither Lok Nath Attri nor Chaman Lal passed muster in satisfying this requirement. In consequence, Section 71 of the Evidence Act had a role to play in the matter, as one attesting witness, Chaman Lal, denied the very execution of the document in his presence while the other attesting witness, Lok Nath Attri, did not establish its execution in terms of the legal mandate. It was, therefore, incumbent upon Dhani Ram to lead other evidence to prove the execution of the Will by Leela Devi. However, neither Ghanshyam Dutt Sharma, the document writer who scribed the Will, nor anyone from the Registrar's Office at Kasauli were examined to prove its execution.
- 27.** On the above analysis, it is manifest that compliance with the essential legal requirements, in terms of Sections 68 and 71 of the Evidence Act and Section 63 of the Succession Act, was not established in order to prove the execution of Ex. DW-2/A Will. As Dhani Ram failed to prove the execution of the Will in terms of the mandatory legal requirements, Shiv Singh would be entitled to succeed to the properties by way of intestate succession under Section 15 of the Act of 1956, as rightly held by the Himachal Pradesh High Court.
- 28.** The appeal is, therefore, bereft of merit and is accordingly dismissed.

Interim Order dated 30.07.2009 shall stand vacated.

Parties shall bear their own costs.

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