

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RFA 261/2001**

% **November 02, 2011**

RISHAB KUMAR JAIN Appellant
Through: Mr.Hari Kishan, Adv. with appellant in person.

VERSUS

ROOPWATI JAIN & ORS. Respondents
Through: Mr.Navlendu Kumar proxy counsel for Mr.A.K.Singh, Adv.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this Regular First Appeal under Section 96 of CPC is to the impugned judgment of the Trial Court dated 22.05.2001. By the impugned judgment, the Trial Court dismissed the suit for partition, rendition of accounts and injunction filed by the appellant-plaintiff. The disputes in the suit concerned the properties of late Sh. A.P.Jain.

2. The facts of the case are that late Sh A.P.Jain had married twice. The appellant-plaintiff and the defendant no.6 were the son and daughter from the first marriage. The defendant no.1 was the widow from the second

marriage and defendant nos. 2 to 5 are their children from the second marriage. Late Sh A.P.Jain owned a property bearing no. B-270, Saraswati Vihar, Delhi. Late Sh.A.P.Jain also left certain fixed deposits in banks at the time of his death. It is with respect to these properties that the subject suit came to be filed.

3. The defendant nos. 1 to 5/respondents 1 to 5 contested the suit and placed reliance upon a registered Will dated 15.06.1993 of late Sh. A.P.Jain. This Will was registered on 15.06.1993 with the sub-Registrar at registration no. 25139. As per the Will, the properties of late Sh. A.P.Jain was bequeathed to the defendant no.1/widow for life and thereafter reversionary benefits were to devolve upon the defendant nos. 2 to 5. There were also limited benefits conferred on one Smt Sunita Jain.

4. The main contest in the Court below therefore was with regard to the validity of the Will dated 15.06.1993 of late Sh. A.P.Jain.

5. The appellant-plaintiff raised two main arguments against the Will. The first argument was that the execution of the Will was shrouded in suspicious circumstances and, therefore, the Will was ought to be discarded. The second argument was that the signatures on the Will are not the signatures of the deceased testator late Sh. A.P.Jain.

6. On the aspect of suspicious circumstances, learned counsel for the appellant has argued that there are following three suspicious circumstances so as to hold that the Will is not a genuine document but a forged and

fabricated document:-

- (i) the defendant no.1 had taken active part in making of the Will. Once a propounder had taken active part in making of the Will then the Will is said to be shrouded by suspicious circumstances and ought to be disbelieved.
- (ii) There was no reason for the deceased Sh.A.P.Jain to disinherit the plaintiff who was the son from the first wife and defendant no.6 who was the daughter from the said first wife. Once close relations are disinherited, the Will should be looked upon with suspicion and discarded.
- (iii) It is argued that there were two photocopies of Wills before the Trial Court one Ex.DW1/1 and the second the Will mark 'A' filed by the defendants alongwith the list of documents dated 08.05.1997, and the photographs of the deceased Sh.A.P.Jain on both these Wills are different.

7. In my opinion, none of the three contentions, as raised on behalf of the appellant, have any substance. So far as the first part of the defendant no.1/ widow taking active part in making of the Will is concerned, the Trial Court has given the following observations and findings:-

“12. The Will Ex.DW1/1, no doubt, gives substantial benefit to defendant No.1. But, merely because she accompanies A.P.Jain to the office of Sub-Registrar, it cannot be said that she took active part in the execution of the Will. There can be nothing suspicious if a wife accompanies her old husband aged 69 to the Sub-Registrar's office. The plaintiff

has alleged in para 7 of the replication that defendant No.1 used to pressurize A.P.Jain to transfer the property in her name but he never agreed to the proposal. Significantly, PW1 Rishab Kumar Jain has made no such allegation in his statement in the court. Moreover, a perusal of the Will Ex.DW1/1 would show that Shri A.P.Jain also gave a limited right in the property to one Sunita Jain. This shows that the testator had exercised his own judgment and he had executed the Will of his own free will....”(underlining added)

8. I completely agree with the aforesaid reasoning of the Trial Court because it is not unnatural for a wife to accompany her aged husband/testator to the office of the sub-Registrar considering that the age of the husband was 69 years. The issue with regard to propounder taking active part in making of the Will and consequently of the Will to be taken with suspicion, is a rule which depends for its application on the facts and circumstances of each case. Further, this is only one of the circumstances which is examined alongwith all other circumstances. Since it is nothing unnatural for a wife to accompany the husband, I do not find that this is a suspicious circumstance to discard the Will which is otherwise been duly proved and exhibited. Also, there are various other circumstances, as noted by the Trial Court, to show the due execution and attestation of the Will and the reasons why such a Will was executed. Therefore, no interference is required with the findings of the Trial Court as there cannot be suspicious circumstances emerging because a wife accompanies the husband-testator to the office of the sub-Registrar.

8. On the aspect that the Will should be considered unnatural and,

therefore suspicious, because the appellant/ plaintiff who is the son from the first wife and defendant no.6, daughter from the first wife have been disinherited, I find that the Trial Court has once again correctly dealt with this aspect in Paragraphs 13 to 15 of the impugned judgment which read as under:-

“13. It is next contended on behalf of plaintiff that A.P.Jain had no reason to disinherit the plaintiff and his real sister who were born from the first marriage. IT is argued that depriving both children from the first wife was totally unnatural and unjust. On perusal of the Will Ex.DW1/1, however, I find that Shri A.P.Jain spelt out the reasons for not giving anything to the plaintiff and his sister Mohini Gupta. The relevant part of the Will is reproduced below:-

“I have already spent sufficient money on the bringing up of my daughter Mohini and son Rishab Kumar and given them decent marriages. I also spent much money on religious ceremonies of Mohini and Rishab Kumar from time to time. I have made them well settled and I don’t want to give any share in may any movable or immovable property.”

14. It was very natural for A.P.Jain to feel concerned about his wife. He may have realised that the plaintiff being the steps son of defendant No.1, may not take care of her after his death. He stated thus in the Will:-

“My wife named Smt. Roop Kumari Jain is over 56 years of aged and suffering from various diseases for past sometime. She requires sufficient money for treatment and further day to day maintenance of life. She has to other source of income except to depend totally on me. She has served me with heal, heart and soul in all thick and thin in the past.”

15. There was nothing unnatural if A.P.Jain thought it proper to make adequate provision for his wife. DW2 D.P. Singh does state on cross examination that A.P.Jain did not tell him anything about the plaintiff or his sister. This might be a lapse of memory on the part of the witness. The recital in the Will shows that A.P.Jain had not concealed

anything.....”(underlining added).

The testator therefore has given valid reasons to disinherit the appellant/plaintiff and the defendant no.6. Firstly, the deceased testator had spent sufficient amount on the marriages, subsequent religious ceremonies and which he had otherwise provided to the appellant/plaintiff and defendant no.6. Further, the defendant no.1 was an aged person suffering from various diseases and, therefore, the deceased testator stated in the Will that she would require money for her treatment and maintenance. In such circumstances, therefore, not to grant any share in the property to the appellant/plaintiff and the defendant no.6 cannot be considered as a suspicious circumstance especially when the Trial Court had noted that the deceased testator also gave limited right in the property to one Smt.Sunita Jain showing that the deceased testator had exercised his own judgment/free will for executing the testamentary document. I may, in this regard, refer to the decision of the Supreme Court in the case of ***Uma Devi Nambiar & Ors. vs. T.C. Sidhan (Dead): 2004(2) SCC 321*** where the Supreme Court has observed that the Will is executed to alter the ordinary mode of succession and by the very nature of things it is bound to either reduce or deprive the natural heirs of their shares. The Supreme Court has further said that if a person intends to bequeath his property to his natural heirs only then there is no necessity at all of executing a Will. Once other valid circumstances actually exist to show the Will to be a valid Will, merely

because natural heirs have been excluded or have been given a lesser share cannot be treated as a suspicious circumstance. I, therefore, reject the argument that the Will should be discarded because the appellant/plaintiff and the defendant no.6 were not given any share in the properties.

9. So far as the argument that the photographs which appear in the two Wills, Ex.DW1/1 and the document mark 'A' filed with the list of documents dated 08.05.1997 are different, is an argument, in my opinion, which is not even worth few lines which I have to write to deal with this submission. The only difference in the two photographs in the two documents are that the in the second document, the photocopy of the photograph is smudged because the photocopy was not properly taken. Surely, this cannot mean that the photographs on the Will, Ex.DW1/1 and the document mark 'A' are different. This argument is wholly frivolous and is without merit and is accordingly dismissed. I may note that subsequently while dealing with the issue of validity of execution of the Will, I will note that the Trial Court has referred to the fact that the original Will was brought by the defendant nos. 1 to 5 for taking of photographs of the signatures of the deceased testator by the handwriting expert of the appellant/plaintiff, but, the handwriting expert did not care to take photographs of the original signatures on the original Will.

10. The final issue which has been argued is that the Will Ex.DW1/1 does not contain the signatures of the deceased testator. This argument has been dealt with by the Trial Court in Paragraphs 16 to 19 of the impugned

judgment and which read as under:-

“16. The plaintiff has alleged that the signatures of the testator on the Will were forged. He states that his father used to sign as A.P.Jain and he never wrote his full name. Strangely enough PW1 Rishab Jain does not even know if the full name of his father was Ajeet Prasad Jain. He has examined PW3 Harish Kumar from State Bank of Patiala to show that his father used to sign as A.P.Jain. On cross examination, however, PW3 Harish Kumar has admitted that the documents Ex.PW3/D2 and PW3/D3 bear signatures of A.P.Jain. These two documents bear the full signatures of Ajeet Prasad Jain and thus negative the contention of the plaintiff that his father used to sign as A.P.Jain only.

17. The plaintiff has examined PW5 Smt.R.K.Viz to show that the signatures on the Will were forged. The report of Smt. R.K.Viz is Ex.PW5/1. Regarding the authenticity of signatures and thumb impression of the testator on the original Will, she has expressed her opinion in the following words:-

“From the above observations and other cumulatively it appears that the signatures and thumb impressions on the documents under reference probably are not written by the same writer.”

18. The use of the word “probably” shows that Smt. Viz herself was not very sure of the opinion. The science of handwriting examination is not otherwise a perfect science and when the handwriting expert himself sounds tentative, it becomes very unsafe to rely on the opinion of the handwriting expert. Moreover, in this case, I have other reasons also to discard the opinion of Smt. R.K.Viz. She has expressed opinion regarding the genuineness of thumb impression but there is not a single observation regarding the ridges etc. of thumb impression in the whole report. I also find it strange as to why the Smt. R.K.Viz did not take care to take photographs of the original signatures from the original Will when the same had been made available to here on 07.02.2000.

19. There is another fact which eliminates the possibility of forgery. The photograph of the testator is pasted on the Will. PW1 Rishab Jain admits that it is the photograph of his father A.P.Jain. He states that the photograph may have been pasted later but such possibility can be safely ruled out because after registration the document remained in the custody of the Registrar and the defendants could have had no opportunity to paste the photograph on the Will later on....”(underlining added).

11. In view of the detailed conclusions as stated above, and which I accept, the trial court was justified in holding that the Will was duly executed by the deceased testator. Firstly, the Trial Court has noted that an expert witness must not be ambivalent/unusual while giving evidence but however the expert witness of the plaintiff was herself unsure because while referring to the fact that the signatures and the thumb impressions on the Will she opined that the signatures are 'probably' not of the deceased testator. Once the expert herself was not sure, consequently the report of such expert could not be relied upon. The Trial Court has rightly noted that it was very strange why the handwriting expert-Smt. R. K. Viz did not take photographs of the original signatures from the original Will when the same had been made available to her on 07.02.2000. The Trial Court has rightly held that another reason to disbelieve the issue of forgery is that photographs of the deceased testator have been pasted on the Will and the argument of the appellant was rightly dismissed that the photographs could have been pasted later on. Obviously, such an argument is easy to make but has to be looked upon with great caution in as much as the argument if accepted would mean that there has been tampering with the records of the sub-Registrar, and which is required to be very categorically proved. I do not think the facts of the case show that any manipulation was done in the records of the sub-Registrar as was sought to be argued.

12. One other aspect I would like to note before concluding is that there

was no great delay before the Will was propounded after the death of the deceased by defendant nos. 1 to 5. The testator died in 1996 and the suit was filed in the year 1997. Obviously, therefore, there is no delay and in fact, the Will had been produced in the bank of the deceased much earlier so as to encash the FDRs of the deceased.

13. A civil case is decided on balance/preponderance of probabilities. An Appellate Court will not interfere if the trial court has taken one plausible and possible view. Unless the view taken by the trial court causes grave injustice, this Court would loath to interfere with the detailed findings and conclusions of the trial court. I do not find there is any injustice caused by the impugned judgment. In every case there are always evidences for and against each party and the Trial Court is completely justified in putting the evidences in a melting pot so as to determine the final picture which has to emerge. The final picture which has rightly emerged was that late Sh. A. P. Jain had executed his Will, Ex DW1/1.

13. In view of the above, I do not find any merit in the appeal which is accordingly dismissed, leaving the parties to bear their own costs.

14. Trial court record be sent back.

VALMIKI J. MEHTA,J

NOVEMBER 02, 2011
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