

Court No. - 48

Case :- WRIT - B No. - 2574 of 2023

Petitioner :- Arvind Kumar Singh And Another

Respondent :- Deputy Director Of Consolidation And 17 Others

Counsel for Petitioner :- Vineet Kumar Singh, Sr. Advocate

Counsel for Respondent :- C.S.C., Aqeel Ahmad, Ramesh Chandra, Satendra Kumar Singh, Suresh Chandra Varma

Hon'ble Saurabh Shyam Shamsbery, J.

1. The present writ petition is arising out of consolidation proceedings where a registered Will was under question.
2. Sri H.N. Singh, learned Senior Advocate assisted by Sri Pranjal Singh, learned counsel for petitioners, submits that a Will has to be proved according to law, i.e., by evidence of attesting witnesses and that it is not surrounded by any suspicious circumstances.
3. Sri Ramesh Chandra, learned counsel appearing for contesting-respondents, has not disputed the above submission. However, he submits that Settlement Officer of Consolidation has considered the statements of attesting witnesses and held that Will was proved. He read out the following contents of the order passed by Settlement Officer of Consolidation:

"उक्त रजिस्टर्ड वसीयत मु० कुन्ता ने अपनी लड़की तिलकराजी के पुत्रों भगवान व अशोक कुमार पुत्रगण विश्वनाथ सिंह को लिखा है। कुन्ता का वृजभूषण की लड़की होना तथा उनकी लड़की तिलकराजी का होना निर्विवाद है, जैसाकि वादी श्री भगवान एवं विपक्षी राजेन्द्र प्रसाद के बयानों से स्पष्ट है। यह वसीयत वादी श्री भगवान के बयान 22.06.2013, 26.06.2013, 03.07.2013 तथा हासिए गवाह समरबहादुर सिंह के बयान दिनांक 03.07.2004, 25.08.2009, व 15.06.2013 से सत्यापित है। जहाँ तक वादी श्री भगवान के बयान एवं समरबहादुर सिंह के बयानों की उत्तरदाता की तरफ से तकनीकी व्याख्या का प्रश्न है तो , ग्रामीण

काश्तकारों के कथनों की बहुत गम्भीर तकनीकी व्याख्या नहीं की जानी चाहिए और मौखिक अभिकथनों की गम्भीर व्याख्या करते हुए अलग अर्थ निकाल कर सारभूत न्याय ' के विरुद्ध नहीं जाया जा सकता। अतः उक्त बयानों के तकनीकी निर्वचन के आधार पर अवर न्यायालय तथा विपक्षीगण द्वारा उक्त पंजीकृत वसीयत को संदिग्ध/अविश्वसनीय मान लेने का निष्कर्ष अनुपयुक्त व अतार्किक है। इसके अलावा अपीलान्ट के पक्ष में निष्पादित पंजीकृत वसीयत को सक्षम न्यायालय द्वारा मंसूख कराने का प्रयास भी विपक्षीगण द्वारा नहीं किया गया। अतः अपील-मेमों में प्रश्नगत् आदेश दिनांक 15.07.2013 अनुचित, अविधिक व अतर्कसंगत है।"

4. Learned counsel for respondents further submits that Deputy Director of Consolidation has upheld the aforesaid findings.
5. Heard learned counsel for parties and perused the material available on record.
6. I have carefully perused the impugned orders. For reference the order passed by Revisional Authority is mentioned hereinafter:

"आज पत्रावली पेश हुई। पत्रावली पर उपलब्ध साक्ष्य एवं उभय पक्ष द्वारा की गयी बहस का अनुशीलन किया गया। यह निगरानी चकबन्दी अधिकारी के आदेश दिनांक 15.07.2013 एवं बन्दोबस्त अधिकारी चकबन्दी के आदेश दिनांक 26.09.2017 के विरुद्ध दिनांक 10.10.2017 को अन्दर म्याद प्रस्तुत की गयी है। चकबन्दी अधिकारी द्वारा पंजीकृत वसीयत के आधार पर आदेश न करते हुए , वरासत के आधार पर आदेश दिनांक 15.07.2013 पारित किया गया, जिसके विरुद्ध बन्दोबस्त अधिकारी चकबन्दी के न्यायालय में अपील प्रस्तुत की गयी। बन्दोबस्त अधिकारी चकबन्दी द्वारा यह पाया गया कि प्रतिपक्षी के पक्ष में मूल

काश्तकार द्वारा पंजीकृत वसीयत दिनांक 09.09.1992 के आधार पर दाखिल खारिज आदेश पारित किया गया एवं चकबन्दी अधिकारी का आदेश दिनांक 15.07.2013 को निरस्त कर दिया गया। धारा 171 व 72 आदि के प्राविधान तब लागू होते हैं, जब काश्तकार निर्वसीयती मरा हो। धारा 171 आदि में निम्न शब्दावली प्रयुक्त की गयी है। यदि कोई निर्वसीयती भूमिधर /असामी की मृत्यु हो जाती है। उक्त शब्दावली से स्वतः स्पष्ट है कि धारा 171 से लेकर धारा 175 जेड०ए०एक्ट के प्राविधानों के अन्तर्गत मृतक वारिसों के पक्ष में दाखिल खारिज की कार्यवाही तब की जायेगी, जब काश्तकार निर्वसीयती मरे हो (बिना वसीयत)। प्रस्तुत प्रकरण में चूंकि मूल काश्तकार द्वारा प्रतिपक्षीगण के पक्ष में पंजीकृत वसीयत निष्पादित की गयी थी, इसलिए इसमें उत्तराधीकार के प्राविधान लागू नहीं होंगे एवं पंजीकृत वसीयत के आधार पर दाखिल खारिज की कार्यवाही की जायेगी। चकबन्दी अधिकारी द्वारा विधि के विरुद्ध रजिस्टर वसीयत अमान्य करते हुए धारा 171 आदि के अन्तर्गत निगरानीकर्ता के पक्ष में आदेश दिनांक 15.07.2013 पारित किया गया, जो स्थापित विधि व्यवस्था के विरुद्ध है। बन्दोबस्त अधिकारी चकबन्दी द्वारा उक्त विधि विरुद्ध आदेश को निरस्त करते हुए पंजीकृत वसीयत के आधार पर आदेश पारित किया गया है। जो सर्वथा विधि सम्मत है, स्थिर रहने योग्य है। निगरानी निराधार होने के कारण निरस्त होने योग्य है।

आदेश

उपरोक्त निर्णय के आधार निगरानी कर्ता की निगरानी निराधार होने के कारण निरस्त की जाती है। पत्रावली बाद आवश्यक कार्यवाही दाखिल दफ्तर हो।"

7. This Court has considered the issue as to how a Will has to be proved in **Chhatrapal Vs. D.D.C. & Ors, Neutral Citation No.2023:AHC:172664**, relevant paras 27, 33, 34 and 35 thereof are mentioned hereinafter:

"27. The revision petition filed by petitioner and his two brothers was rejected by a detailed order dated 12.09.2019 and above referred findings of Appellate Authority were confirmed as well as Revisional Authority has taken note of certain ambiguity and contradictions in the testimonies of witnesses whether 'will' was hand written or typed as well as whether it was registered or not. In the above background before considering the rival submission, it would be apposite to refer few paragraphs of judgment passed by Supreme Court in the case of Raj Kumari and Others Vs. Surinder Pal Sharma, (2021) 14 SCC 500 where issue of 'how a 'will' be proved', was considered in detail, which are reproduced hereinafter :-

"14. Sections 68 and 71 of the Evidence Act, which relate to proof of documents required by law to be attested, read 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.

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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."

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16. After referring to *H. Venkatachala Iyengar (supra)*, this Court in *Jaswant Kaur (supra)* had laid down the following propositions of law:

“10.....(1) Stated generally, a will has to be proved like any other document, the test to be applied being the usual test of the satisfaction of the prudent mind in such matters. As in the case of proof of other documents, so in the case of proof of wills, one cannot insist on proof with mathematical certainty.

(2) Since Section 63 of the Succession Act requires a will to be attested, it cannot be used as evidence until, as required by Section 68 of the Evidence Act, 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.

(3) Unlike other documents, the will speaks from the death of the testator and therefore the maker of the will is never available for deposing as to the circumstances in which the will came to be executed. This aspect introduces an element of solemnity in the decision of the question whether the document propounded is proved to be the last will and testament of the testator. Normally, the onus which lies on the propounder can be taken to be discharged on proof of the essential facts which go into the making of the will.

(4) Cases in which the execution of the will is surrounded by suspicious circumstances stand on a different footing. 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 and such other circumstances raise suspicion about the execution of the will. That suspicion cannot be removed by the mere assertion of the propounder that the will bears the signature of the testator or that the testator was in a sound and disposing state of mind and memory at the time when the will was made, or that those like the wife and children of the

testator who would normally receive their due share in his estate were disinherited because the testator might have had his own reasons for excluding them. The presence of suspicious circumstances makes the initial onus heavier and therefore, in cases where the circumstances attendant upon the execution of the will excite the suspicion of the court, the propounder must remove all legitimate suspicions before the document can be accepted as the last will of the testator.

(5) It is in connection with wills, the execution of which is surrounded by suspicious circumstances that the test of satisfaction of the judicial conscience has been evolved. That test emphasises that in determining the question as to whether an instrument produced before the court is the last will of the testator, the court is called upon to decide a solemn question and by reason of suspicious circumstances the court has to be satisfied fully that the will has been validly executed by the testator.

(6) If a caveator alleges fraud, undue influence, coercion, etc. in regard to the execution of the will, such pleas have to be proved by him, but even in the absence of such pleas, the very circumstances surrounding the execution of the will may raise a doubt as to whether the testator was acting of his own free will. And then it is a part of the initial onus of the propounder to remove all reasonable doubts in the matter."

"33. In order to prove a 'will', the evidence of attesting witnesses and its scribe are relevant. It would be relevant to note here that at relevant time registration of a 'will' was not an essential requirement and in present case as referred above both attesting witnesses were examined and witness Leeladhar and Ram Singh have specifically stated it was executed in their presence and testator and scribe were also present, however, as referred above by Revisional Authority and it would be clear from perusal of statements which are part of supplementary affidavit filed before this Court, that they mentioned the 'will' was in handwriting, whereas undisputedly, contents of 'will' were typed by typewriter, as clearly evident from the photocopy i.e. in

Hindi typing on a non-judicial paper and was notarized also and at bottom it was mentioned that being drafted by and typed by Jaidev Gargaon, Advocate, therefore, it has created a doubt that whether witnesses were present, when 'will' was executed and signed by the testator.

34. There is yet another circumstance which also creates suspicion about truthfulness of witnesses, since witness Leeladhar has stated that 'will' was registered and all persons have appeared before Registrar, whereas undisputedly alleged 'will' was never registered but it was only notarized though the other witness Ram Singh has stated that it was not registered. The other witness Jaidev Gargaon, Advocate has stated that 'will' was scribed by him by pen having new nip but as referred above it was a typed document though he has stated that it was not registered, therefore, it also appears that said advocate was not truthful before authority.

35. In the background of above doubtful witnesses account, the consideration of other circumstances would become more relevant and for that findings returned by Appellate Court and Revisional Court referred above, become crucial for consideration whether the 'will' was proved, or not especially when alleged 'will' was executed in exclusion of children of testator. In order to consider above suspicious circumstances surrounded the 'will', the paragraph number 25 of a recent judgment passed by Supreme Court in case of Swarnlatha and others versus Kalavati and others, 2022 SCC online 381 would be relevant that:-

“25. The law relating to suspicious circumstances surrounding the execution of a Will is already well-settled and it needs no reiteration. It is enough if we make a reference to one of the recent decisions of this Court in Kavita Kanwar v. Mrs. Pamela Mehta, AIR 2020 SC 544 where this Court referred to almost all previous decisions right from H. Venkatachala Iyengar v. B.N. Thimmajamma, AIR 1959 SC 443. But cases in which a suspicion is created are essentially those where

either the signature of the testator is disputed or the mental capacity of the testator is questioned. This can be seen from the fact that almost all previous decisions of this Court referred to in Kavita Kanwar (supra) list out circumstances, which in the context of the lack of sound and disposing state of mind of the testator, became suspicious circumstances. In the matter of appreciating the genuineness of execution of a Will, there is no place for the Court to see whether the distribution made by the testator was fair and equitable to all of his children. The Court does not apply Article 14 to dispositions under a Will.”

8. From bare reading of reasons given by Deputy Director of Consolidation, it is evident that on the face of it, it is in the teeth of above referred **Chhatrapal (supra)**. The Revisional Authority has not even referred the provisions of law and evidence to prove the Will specifically when Appellate Authority has interfered with order passed by Consolidation Officer, that will was surrounded by suspicious circumstances and was not proved in accordance with law. Therefore, the order passed by Deputy Director of Consolidation could not sustain.

9. At this stage, learned counsel for parties submit that the matter may be remitted to Deputy Director of Consolidation, who has wide power under Section 48 of U.P. Consolidation of Holdings Act, 1953.

10. In view of above, order dated 20.06.2023 is hereby set aside and matter is remitted back to Revisional Authority to pass a fresh order. Revisional Authority is directed to consider the matter in accordance with law as well as taking note of judgment passed in **Chhatrapal (supra)** and conclude the proceedings within a period of six months from today, if there is no legal impediment.

11. With aforesaid direction/ observation, the writ petition is disposed of.

Order Date :- 6.12.2023

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