

Court No. - 48

Case :- WRIT - B No. - 4067 of 2023

Petitioner :- Satish Chandra Sharma

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Archana Singh, Shreeprakash Singh

Counsel for Respondent :- CSC, Virendra Kumar Gupta

Hon'ble Saurabh Shyam Shamshery, J.

1. In present matter, a case is pending under Section 9-A(2) of U.P. Consolidation of Holdings Act, 1953 before Consolidation Officer, Rampur, wherein a dispute is regarding validity and genuineness of two Wills. The parties have submitted their evidence and at the stage of arguments, petitioner filed an application for forensic examination of thumb impression of testator of a Will deed in question as well as examination of signatures by a hand writing expert.

2. The said application was rejected by Consolidation Officer by an order dated 08.05.2023 on ground that matter is pending at stage of argument, therefore, at this belated stage, such application could not be considered and same view was taken by Revisional Court.

3. Sri Shreeprakash Singh, learned counsel for petitioner submits that examination of thumb impression and signature are important aspect as it would conclusively prove, whether Will was signed by testator or not and it would also be in interest of justice if such report is called for.

4. Sri Virendra Kumar Gupta, learned counsel for respondent No.6 submits that matter is still pending before Consolidation Officer, who has to decide validity of Wills in question. Parties have already submitted their evidence (oral as well as documentary) and presently it is at stage of argument. At this belated stage any application for examination of thumb impression or signature would only linger the case.

5. Heard counsel for parties and perused the record.

6. The law in regard to prove of Will was considered by this Court in case of **Chhatrapal Vs. D.D.C. & Ors, Neutral Citation**

No.2023:AHC:172664, and relevant paragraphs thereof are mentioned 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."

(emphasis supplied)

"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."

7. As held above, a Will has to be prove at least by examination of one attesting witness as well as it may not be surrounded by any suspicious circumstances and, therefore, forensic examination of thumb impression or expert opinion on signature would require in exceptional circumstances only. The petitioner has failed to show

any such circumstances, and, therefore, a belated application filed at stage of argument is also a ground to reject petitioner's prayer.

8. In aforesaid circumstances, I do not find any illegality in impugned order, however, Consolidation Officer will always have a liberty that in case, situation warrants for any expert opinion, the Authority may pass an order in accordance with law.

9. This writ petition is accordingly, **disposed of**.

Order Date :- 8.12.2023

P. Pandey