



THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

Principal Seat at Guwahati

Testamentary Case No. 8/2016

Smti. Geetanjali Das,
W/o Late Golap Das,
R/o Tezpur Town,
Mouza – Mahabhairab,
Dist. – Sonitpur, Assam.

..... Appellant.

-Versus-

- 1.** Rina Das,
W/o Late Golap Das,
Vill. – Bamgaon,
Mouza – Biswanath,
PIN – 784176,
Dist. – Sonitpur, Assam.
- 2.** Uttam Das,
S/o Late Golap Das,
Vill. – Bamgaon,
Mouza – Biswanath,
PIN – 784176,
Dist. – Sonitpur, Assam.
- 3.** Rimpi Das,
D/o Late Golap Das,
Vill. – Bamgaon,
Mouza – Biswanath,
PIN – 784176,
Dist. – Sonitpur, Assam.
- 4.** Aditya Das,
S/o Late Golap Das,
Vill. – Bamgaon,

Mouza – Biswanath,
PIN – 784176,
Dist. – Sonitpur, Assam.

..... Respondents.

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

Advocates for the appellants	:-	Mr. B. Chakravarty.
Advocate for the respondent	:-	Mr. M. Choudhury.
 Date of Hearing	 :-	 12.09.2024.
Date of Judgment & Order	:-	23.09.2024

JUDGEMENT & ORDER (CAV)

Heard Mr. B. Chakravarty, learned counsel for the appellant and Mr. M. Choudhury, learned counsel for the respondent.

2. This appeal, under Section 299 of the Indian Succession Act, 1925 is directed against the judgment and order dated 30.07.2014, passed by the learned Additional District Judge, Sonitpur, Tezpur in Title Suit No. 47/2007.

3. It is to be noted here that vide impugned judgment and order dated 30.07.2014, the learned Additional District Judge, Sonitpur, Tezpur has dismissed the suit, being Title Suit No. 47/2007, filed by the petitioner for granting of Letter of Administration on the last will of deceased Golap Das.

Background Facts:-

4. The background facts, leading to filing of the present appeal, are adumbrated herein below:-

"Golap Das, since deceased, was a permanent resident of Bamgaon, Biswanath Chariali of the then Sonitpur district. He was serving as Development Officer at the Oriental Insurance Company Limited at Tezpur Branch. He died on 22.08.2006, at EMM Hospital, Tezpur. At the time of his death he left behind his wife Smti. Rina Das, son Sri Uttam Das, daughter Smti. Rimpi Das and another son namely, Sri Aditya Das. Prior to his death, on 03.03.2004, Golap Das, had executed his last will and testament whereby he bequeathed his estate and effect thereupon as indicated in the same. The will was executed by the deceased in the presence of attesting witnesses, who had put their signatures on the same.

After the death of Golap Das, the present appellant had filed an application before the learned trial court for grant of Letters of Administration of the said will, in her favour, under Section 276 of the Indian Succession Act. Thereafter, the opposite parties, namely, Smti Rina Das, Sri Uttam Das, Smti Rimpi Das and Sri Aditya Das had filed a joint written statement whereby they had stated that Smti Rina Das is the legally married wife of the deceased Golap Das since long as per Hindu Marriage Act and other parties are legitimate sons and daughter of the deceased and during the lifetime of Rina Das, the deceased cannot marry any other women and the appellant not being the legally married wife could not claim to be the 'wife' of deceased Golap Das and on such count, the application for issuing letters of administration is not maintainable.

The opposite parties/respondents also stated that the petitioner/appellant had filed another proceeding, being Misc.

(S/C) Case No. 13/2007 for grant of Succession Certificate in respect of the debts and securities of the deceased Golap Das, wherein the appellant had stated that she got married to Golap Das on 04.02.2004, and the same was during the lifetime of legally married wife of the deceased Smti. Rina Das, and under the Hindu Marriage Act, 1955, performance of such marriage is not legally valid. Further, the respondents had denied of execution of any will or testament on 03.03.2004, in favour of the appellant bequeathing any of his debts and securities, estates and effects by Late Golap Das.

Thereafter, considering the pleadings and hearing both sides, the learned trial court had framed the following issues :-

1. Whether the petition for grant of Letters of Administration with the purported WILL annexed is maintainable ?
2. Whether petitioner Smti. Gitanjali Das is the legally married wife of the deceased Golap Das ?
3. Whether the petitioner is a lawful heir of the deceased Golap Das ?
4. Whether the deceased Golap Das lawfully executed any last WILL dated 03.03.04 bequeathing his estates to the petitioner ?
5. Whether the purported WILL dated 03.03.04 is sham, forged, fraudulent, and inoperative and unconsciousable ?
6. Whether the purported WILL has made in serious circumstances with coercion and undue influence

while Golap Das was leading adulterous life with the petitioner?

7. Whether the petitioner is entitled to the grant of Letters of Administration with any WILL annexed in respect of all the estates of the deceased?

Thereafter, hearing both the parties, the learned trial court had framed two main issues as under :-

1. Whether the WILL, in question, was duly executed as required under the provisions of Indian Evidence Act 1872 and the Indian Succession Act 1925.
2. Whether the WILL, in question, surrounded by suspicious and created under unnatural circumstances warranting rejection of prayer for probate of the said WILL and for grant of Letters of Administration.”

Thereafter hearing learned Advocates of both sides, the learned trial court had dismissed the suit, vide impugned judgment and order dated 30.07.2014.

Grounds:-

5. Being highly aggrieved and dissatisfied with the judgment and order dated 30.07.2014, passed by the learned Additional District Judge, Sonitpur, Tezpur in Title Suit No. 47/2007, the appellant has preferred this present appeal, on the following grounds :-

- (i) That, the respondents in their pleadings as well in their evidence had never disputed the signature of the testator on

the will and they had also admitted in their pleadings that the deceased was residing with the appellant since several years at Tezpur. The only stand taken by the respondents, was that the appellant cannot be the legally married wife and this fact is nothing to affect the will, which has nothing to do even if the marriage of the appellant with the deceased is turn null and void and the probate court is only concerned with the execution of the will, and which fact having been established by the appellant the learned court ought to have granted the letter of Administration in her favour;

- (ii) That, the witnesses of the appellant i.e. P.W.3 & P.W.4 had been able to establish that the will was duly executed and one of them is the scribe of the will and the other was the attesting witness to the will and both had supported the fact that the testator had signed the will in their presence and the testator was in sound health and mind when he executed the will and no contrary evidence having been adduced and anything contrary is proved, the learned trial court ought to have granted the prayer of the appellant;
- (iii) That, the sole defendant witness (D.W.1), the respondent No. 1, in her cross-examination clearly stated that she never visited the deceased, when he was sick and the appellant provided marital bliss and nursing to the deceased-testator and having been so admitted, it is quite natural and nothing improbable to happen that the deceased could not have bequeathed the will in favour of the appellant and the said aspect was overlooked by the learned trial court;

- (iv) That, the finding of the learned trial court that deceased Golap Das was ill since 2004 is completely perverse and there is no medical evidence as well as oral evidence to that effect and the learned trial court has stressed upon the alleged contradiction between the evidence of P.W.1 & P.W.3;
- (v) That, the learned trial court had failed to appreciate the fact that the appellant having been able to prove due execution of the will, the burden shifts to the respondents to prove that there was undue influence;
- (vi) That, the learned trial court had failed to appreciate Section 61 of the Evidence Act, 1872 and the appellant having able to prove through evidence by producing the will, the burden under Section 101, 102 & 103 of the Indian Evidence Act, 1872, passed to the respondents to prove the fact of any undue influence;
- (vii) That, the finding of the learned trial court that the will was executed under suspicious circumstances and the same was not based on any sound reasoning of facts and law, but on conjectures and surmises;
- (viii) That, the appellant having discharged the initial burden in proving execution of the will in the manner provided by law, the learned trial court ought to have granted the prayer of the appellant; and
- (ix) That, the learned trial court has relied upon hearsay evidence in respect of undue influence, which are not direct and thus, the finding on mere hearsay and not on any

authentic and credible materials/evidence on record, the impugned judgment and order failed to withstand the legal scrutiny and therefore, it is liable to be set aside.

Submissions:-

6. Mr. Chakravarty, learned counsel for the appellant, reiterating the grounds mentioned in the memo of appeal, submits that the learned trial court has committed manifest illegality both in law and facts, while deciding the Title Suit No. 47/2007, instituted by the appellant. Mr. Chakravarty, further submits that will has duly been executed and execution of the same is duly proved by one attesting witness and as such, the requirement for granting letter of administration stands fulfilled. Mr. Chakravarty also submits that as the appellant has been able to discharge its burden, it is the respondents to show that the will is not executed by following due course of law. Mr. Chakravarty referring to the evidence of D.W.1 submits that she has admitted that she had never been visited the deceased while he was living at Tezpur with the present appellant as husband and wife.

6.1. Mr. Chakravarty, learned counsel for the appellant, in support of his submission, has referred following case laws of this court:-

- (i) **Deepak Kumar Das and Another vs. Parbati Das**, reported in **2008 (Suppl) GLT 733**;
- (ii) **Dilip Dutta Bhowmik vs. Mira Dutta Bhowmik**, reported in **2007 (1) GLT 345**; and
- (iii) **Durlabh Chandra Bhattacharjee vs. Atul Barthakur**, reported in **2005 (4) GLT 306**.

7. On the other hand, Mr. Choudhury, learned counsel for the respondents has supported the impugned judgment and order dated 30.07.2014, passed by the learned Additional District Judge, Sonitpur, Tezpur and submits that execution of the will is suspicious in nature. Referring to the evidence of the appellant as P.W.1, Mr. Choudhury submits that in paragraph No. 4, of her evidence-in-affidavit, she has stated that she found the will (Ext.-1) dated 03.03.2004, executed by her husband in a trunk after the death of her husband and the witnesses mentioned in the will being familiar to her, she had enquired about the will from them and they had stated to her that will was executed by her deceased husband, and thereafter, she has applied for grant of Letters of Administration before the learned trial court. Taking this court through her cross-examination, Mr. Choudhury submits that the appellant, in no uncertain term, admitted that she is not aware of signatories of the will and she did not know the attesting witnesses of the will, namely, Smti. Ramani Deka; Smti. Krishna Roy; and Sri Khargeswar Kalita and she has not came with her deceased husband at the time of execution of the will and she did not know the Mohorar as to who scribed the will and the attesting witnesses have not put their signatures in her presence and she cannot say where Smti. Ramani Deka; Smti. Krishna Roy; and Sri Khargeswar Kalita had put their signatures over the Exhibit – 1.7; Exhibit – 1.8; & Exhibit – 1.10, and she is also not aware of if Exhibit-1.9 is the signature of Sri Bapukan Kalita. Mr. Choudhury, therefore, submits that this contradiction is serious in nature and raised suspicion about the veracity of her version.

7.1. Further, Mr. Choudhury, referring to the evidence of P.W.3, Sri Khargeswar Kalita, submits that he is one of the attesting witness to the will and he stated in his evidence that he, along with Khageswar Kalita, on being requested by deceased Golap Das on 03.03.2004, at about 11

am, went to the Mohori Khana of the Tezpur Court and there he found Late Golap Das and Mohorer Bapukon Talukdar. Then on the request of Late Golap Das, Bapukon Talukdar had authored the will and thereafter he had read over the same to them and thereafter, the deceased put his signatures, Ext.-1.1 to 1.6, over the same, in presence of him and Khageswar Kalita and thereafter, he and Ramani Dekha put their signatures over Ext.-1. Then referring to his cross-examination Mr. Choudhury submits that this witness admitted that deceased Golap Das, Geetanjali, Ramani Dekha and he came to Tezpur Mohori Khana to execute the will on 03.03.2004, and as such, the evidence of P.W.3 belied the version of the appellant, P.W.1, which indicates that the appellant had taken part in execution of the alleged will.

7.2. Referring to the evidence of Bapukan Talukdar, P.W.4, Mr. Choudhury submits that this witness was the scribe of the will and after the will being prepared as told by deceased Golap Das he read over the same in presence of three witnesses and having found the same in order Golap Das put his signatures over the same and thereafter, he and Ramani Dekha and Khageswar Kalita had put their signatures over the same, but in cross-examination he had admitted that he do not know witnesses Ramani Dekha, Krishna Roy and Khargeswar Talukdar and he also admitted that there is no signature of Golap Das in page Nos. 1 & 3.

7.3. Mr. Choudhury also pointed out that the evidence of D.W.1, Smti. Rina Das, on the other hand reveals that she is the legally married wife of deceased Golap Das and that the appellant was with her husband as a domestic help for cooking his food and also doing other house hold works and this fact could be demolished in cross-examination. Referring to her evidence Mr. Choudhury also submits that she came to know about the execution of the will only after filing of the case for issuing succession

certificate being filed by the appellant and that she cannot inherit the properties left by Golap Das being not legally married wife.

7.4. Under the aforementioned facts and circumstances, Mr. Choudhury submits that the contradiction in the version of the witnesses, especially P.W.1 & P.W.3, and lack of signature of the testator Golap Das over some pages of the will gave raise to suspicion about the very execution of the will and the appellant had failed to remove the suspicious circumstances surrounding the same and therefore, it is contended to dismiss the appeal.

8. Having heard the submissions of learned counsel for both the parties, I have carefully gone through the petition as well as the documents placed on record and also perused the impugned judgment and order dated 30.07.2004, so passed by the learned trial court and also perused the will, Exhibit -1.

Legal Proposition:-

9. Before a discussion is directed into the submissions made by learned Advocates of both sides, it would be apposite to discuss the relevant provision of law and also the decisions of Hon'ble Supreme Court presently holding the field.

10. Section 63 of the Indian Succession Act, 1925 provides for execution of unprivileged wills which read as under:-

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.

11. In the case of *Meena Pradhan and Ors. Vs. Kamla Pradha and Anr.* Civil Appeal No.3351 of 2014 (Arising out of SLP(C) NO.17115/2010, Hon'ble Supreme Court, relying upon some of its earlier decisions in *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), had deduced/inferred 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 etc. 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'. 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.

11.1. It is further held that 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.

Appreciation:-

12. Now, advertent to the facts of the present case, I find that the execution of will, Ext.-1 by the testator Golap Das is proved by two attesting witnesses namely, Ramani Deka and Khargeswar Kalita. The evidence of these two witnesses goes to show that the deceased Golap Das had executed Ext.-1, bequeathing his moveable and immovable property in favour of the appellant/propounder and they had also proved their respective signatures over the Ext.-1 and also of the testator of the will, Late Golap Das. Mr. Chakravaty, learned counsel for the appellant has rightly pointed out this during his argument and the case laws referred by him also strengthened his submission.

13. The appellant, thus, succeeded in establishing execution of the will by examining one attesting witness and also examining the scribe of the will. But, as pointed out by Mr. Choudhury, the learned counsel for the respondent, there are suspicious circumstances surrounding execution of the will and it the requirement of law if there are any suspicious circumstances, the burden to remove the same is upon the propounder/appellant and that she had failed to remove the same.

14. There appears to be substance in the submission of Mr. Choudhary, learned counsel for the respondent. As pointed out by Mr. Choudhury, P.W.1 had testified that she was not present while the will, Ext.-1 was executed on 03.03.2004, at Mohori Khana of Tezpur Court. She had found the will in a trunk after performing the Sardha of the deceased Golap Das and on being enquired from the witnesses, whose signatures appears there the Ext.-1, she came to know that the same was executed

by her deceased husband Golap Das bequeathing his properties in her favour.

15. But, cross-examination P.W.1, the appellant/propounder, reveals that she do not know any of the attesting witnesses, namely, Ramani Deka, Krishna Roy and Khargeswar Kalita and she also do not know whether they remained present at the time of execution of the will or not and whether they had not put their signatures over the will in her presence. She also admitted having not familiar with the signatures of Khrishna Roy and Bapukan Kalita, the scribe of the Ext.-1. This apparent contradiction in her version raised suspicion about the veracity of her version that she found the Ext.-1 in a trunk, after demise of her husband.

16. The evidence of P.W.3, Khargeswar Kalita indicates that at the time of the execution of the will, Gitanjali Das, the present appellant and deceased Golap Das came to the Mohori Khana of Tezpur Court on 03.03.2004. This version of the P.W.3 also further fortified the presence of suspicious circumstances surrounding execution of the will. This itself is generally treated as a suspicious circumstance attending the execution of the will, as held by Hon'ble Supreme Court in the case of **H. VenkatachalaIyenger vs. B.N. Thimmajamma& Others** reported in **AIR 1959 SC 443**. And the appellant/propounder had failed to remove the same.

17. Further, the evidence of Rina Das, D.W.2, the first wife of Golap Das reveals that the present appellant was working as domestic help for attending domestic work of her husband who was serving in Tezpur in Oriental Insurance Company. She cannot be a legally married wife of the testator during the subsistence of his first marriage with D.W.2. Thus, bequeathing all the service benefits of the testator to the appellant/propounder is another suspicious circumstance, surrounding

execution of the will, Ext.1, which the appellant/propounder could not remove by adducing cogent evidence.

18. Under the above-mentioned facts and circumstances, this court is of the view that the appellant has failed to remove the suspicious circumstances surrounding the execution of the will, Ext.-1. She had gone to Mohori Khana of Tezpur Court along with the testator Golap Das. She has received substantial benefit under it. This unjust disposition of the service benefits is another suspicious circumstance which the appellant/propounder could not remove.

19. That, a careful perusal of the impugned judgment and order dated 30.07.2014, indicates that the learned Addl. District Judge had found that Gitanjali Das had given two versions of finding of the will while cleaning her house, which creates suspicion and it is hard to believe her version and the same is not trustworthy and credible. By relying two decisions of Hon'ble Supreme court in the case of **Ishwardeo Narayan Singh vs. Smti. Kamta Devi and Others**, reported in **AIR 1954 SC 280** and also in the case of **Rabindra Nath Mukherjee vs. Panchanana Banerjee**, reported in **AIR 1995 SCC 1684**, the learned trial court has held that the execution of the will is doubtful and is surrounded in mystery and suspicious circumstances and therefore, dismissed the petition for granting probate.

20. I have considered the submission of Mr. Chakravarty, the learned counsel for the appellant and also gone through the decisions referred by him. But, in view of the given facts and circumstances on the record I am unable to agree with the same. There is no quarrel at the bar about the proposition of law laid down in the said cases. But, the same are not applicable in all force to the facts and circumstances of the case in hand

in view of the discussion made herein above. Therefore, detail discussion of all those decisions are found to be not necessary herein this case.

Finding:-

21. As discussed herein above there are suspicious circumstances surrounding execution of the will Ext.1. And from the submission of Mr. Chakravarty, learned counsel for the appellant and also from the given facts and circumstances on the record, this court is unable to derive its satisfaction and the appellant has not been able to remove the suspicious circumstances as discussed herein above.

22. Thus, having examined the impugned judgment and order, in the light of the facts and circumstances on the record, this court is of the view that the learned trial court has rightly dismissed the petition vide impugned judgment and order dated 30.07.2014, and the same warrants no interference of this court.

23. In the result, I find this appeal is devoid of substance and merit and accordingly, the same stands dismissed. Send down the record of learned trial court with a copy of this judgment and order. The parties have to bear their own cost.

JUDGE

Comparing Assistant