

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

Regular Second Appeal No.1605 of 1988
Date of Decision: 19th October, 2015

Smt. Mangi and others ..Appellants

versus

Madan Lal and others ..Respondents

CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA

Present: Mr. J.L.Malhotra, Advocate, for the appellants.

None for the respondents.

RAJIVE BHALLA, J.

The appellants challenge judgment and decree dated 12.3.1988, passed by the District Judge, Hisar, partly accepting the appeal and as a consequence, setting aside judgment and decree dated 6.5.1985, passed by the Sub Judge 1st Class, Hisar.

The controversy, in the present appeal, relates to the estate of Smt. Kishni, with the appellants claiming rights by natural succession, being her daughters whereas respondent no.1, a son of another daughter, on the basis of a will, dated 28.9.1974 and an adoption deed dated 30.9.1974. The trial court has discarded the adoption deed and the will and held that daughters of Smt. Kishni shall succeed by natural succession. The first appellate court has, while affirming findings with respect to the illegality of the adoption deed, affirmed the will, thus holding that land would devolve upon respondent no.1 on the basis of the will.

Counsel for the appellants submits that a perusal of

findings recorded by the trial court reveal that detailed reasons have been assigned for discarding the will, namely:- DW4 Anand Dev as well as DW8 Sohlu Ram, Lambardar, the attesting witnesses, have admitted the presence of the beneficiary Madan Lal and his father Dawarka Parshad but as they denied their presence, it raises an inference of active participation. The trial court has also noticed that DW7, Dawarka Parshad, father of the beneficiary, has deposed that Smt. Kishni, the testator, used to reside in Balsmand and his wife Ghanni used to reside with her mother Kishni at Balsmand, thus, raising an inference of undue influence. The trial court has also noticed that DW7 Dawarka Parshad has admitted that the testator came to Satrod Khurd on the previous evening and therefore, it is rather strange that she would execute an adoption deed, Ex.D1, and will, Ex.D2, the next morning. The learned trial court has also held that the fact that the respondents got an adoption deed executed on the same day as the will proves that the will Ex.D2 was executed by prevailing upon the will of the testator.

Counsel for the appellants further submits that though the respondents failed to explain these suspicious circumstances, the appellate court has, without assigning any clear or cogent reasons, affirmed the will. A perusal of the judgment recorded by the first appellate court reveals that it has not dealt with these suspicious circumstances, ignored the deposition by attesting witnesses admitting the presence of the beneficiary and his father, disregarded the effect of holding that the adoption is illegal and, therefore, committed serious errors of law while reversing the judgment and

decree passed by the trial court. Counsel for the appellants states that the following substantial questions of law arise for adjudication:-

(1) Whether the finding recorded by the first appellate court that the presence of the beneficiary and his father do not raise an inference of prevailing upon the free will of the testator, is not perverse or arbitrary?

(2) Whether the first appellate court has, while reversing the judgment and decree passed by the trial court rejecting the will dated Ex.D2, dealt with the factors referred to by the trial court while rejecting the will."

No one is present on behalf of the respondents.

I have heard counsel for the appellants, perused the impugned judgment and the entire record.

The plaintiffs-appellants and respondent/defendant no.2 are the daughters of Smt. Kishni Devi, widow of Mukh Ram, whereas respondent no.1/defendant no.1 is the son of another daughter Smt. Ghanni. The appellants filed a suit claiming ownership of the land and house, in dispute by alleging that mutation no.55 dated 31.3.1979, adoption deed Ex.D1 dated 30.9.1974 and will Ex. D2 dated 28.9.1974, allegedly, executed by Smt. Kishni, in favour of respondent no.1, are null and void. The respondents, on the other hand, filed a written statement asserting the validity of the adoption deed as well as the will. The trial court framed issues with respect to the will and the adoption deed dated 30.9.1974 and after examining the will and the adoption deed rejected both and held that the daughters of Smt. Kishni would succeed to the estate of Smt. Kishni

in equal shares. The first appellate court has, while affirming the finding that the adoption deed is illegal, set aside the finding regarding the will and affirmed its legality. The respondents have not filed an appeal or cross-objections to challenge the finding regarding the adoption deed.

The respondents have not filed any appeal against the finding that the adoption deed is invalid. The dispute, that survives, is the validity of will, dated 28.9.1974, Ex.D2, executed by Smt. Kishni, in favour of Madan Lal, a son of one of her daughters. The trial court, while accepting the right of Smt. Kishni, to execute the will and affirming the execution of the will, has discarded the will by holding that it is surrounded by suspicious circumstances, namely, active participation of the beneficiary Madan Lal and his father Dawarka Parshad, the fact that Smt. Ghanni, mother of the beneficiary, used to look after the testator, the fact that the adoption deed is illegal, as circumstances sufficient to prove undue influence. The first appellate court has held that these suspicious circumstances are neither suspicious nor sufficient to discard the will.

The first substantial question of law, framed by counsel for the appellants, is whether the first appellate court has erred in holding that the presence of the beneficiary and his father does not raise an inference of prevailing upon the free will of the testator? The second question is whether the first appellate court has dealt with the suspicious circumstances pointed out by the trial court. The questions are so intrinsically interlinked, as to require to be answered together.

The appellants urge that as the attesting witnesses have admitted the presence of beneficiary and his father, who, in turn, have denied their presence and it is proved that the mother of the beneficiary was residing with the testator and the adoption deed has been rejected, these facts are sufficient to raise an inference of undue influence, i.e., prevailing upon the free will of the testator. The active participation of a beneficiary or his close relatives, in the execution of a will, is a circumstance that may lead to an inference that the beneficiary prevailed upon the free will of the testator, thereby requiring the rejection of the will for being brought into existence “by such importunity as takes away the free agency of the testator” (the words used in Section 61 of the Indian Succession Act, 1925). The mere presence of the beneficiary and/or his close relatives, without any evidence of any other overt act or an act to suggest interference in the free will of the testator, do not, by themselves, raise an inference of undue influence. Similarly, the fact that the beneficiary's mother was residing with and looking after the testator (her mother), may be the cause for the bequest but cannot, in the absence of any other relevant fact, by itself, raise an inference of undue influence. A reference, in this regard, may be made to a judgment of the Supreme Court in Surinder Pal versus Sarswati, AIR 1974 SC 1999 (a judgment referred to in extenso by the first appellate court). A relevant extract from the judgment reads as follows:-

“ it is elementary law that it is not every influence which is brought to bear on a testator that can be characterised as

“undue”. It is open to a person to plead this case before the testator and to persuade him to make a disposition in his favour. And if the testator retains his mental capacity and there is no element of fraud or coercion- it has often been observed that undue influence may in the last analysis be brought the will cannot be attacked on the ground of undue influence. The law was thus stated by Lord Penzance in - ‘Hall vs. Hall’ (1868) IP & D 481 at P 482 :-

“ But all influences are not unlawful. Persuasion, appeal to the affections or ties of kindred to a sentiment of gratitude for past services, or pity for future destitution, or the like-these are all legitimate and may be fairly pressed on a testator. On the other hand, pressure of whatever character whether acting on the fears or the hopes, if so exerted as to overpower the volition without convincing the judgment, is a species of restraint under which no valid will can be made. Importunity or threats, such as the testator has the courage to resist, moral command asserted, and yielded to for the sake of peace and quiet, or of escaping from distress of mind or social discomfort,- these, if carried to a degree in which the free play of the testator's judgment, discretion, or wishes is overborne, will constitute undue influence, though no force is either used or threatened. In a word, a testator may be led, but not driven, and his will must be the offspring of his own

volition, and not the record of some one else's".

Section 61 of the Indian Succession Act (39 of 1925) enacts that,

" A will or any part of a will, the making of which has been caused by fraud or coercion, or by such importunity as takes away the free agency of the testator, is void."

Illustration (vii) to the section is very instructive and is as follows:-

"A, being in such a state of health as to be capable of exercising his own judgment and volition-B uses urgent intercession and persuasion with him to induce him to make a will of a certain purport. A, in consequence of the inter-cession and persuasion, but in the free exercise of his judgment and volition, makes his will in the manner recommended by B. The will is not rendered invalid by the intercession and persuasion of B."

Thus, it is not in every case where the beneficiary is present or the beneficiary or his parents look after the testator would an inference arise that influence was brought to bear on the testator that may be said to be "undue". The fact that the beneficiary's mother was residing with the testator is but natural, being a daughter of the testator. The mere presence of the beneficiary or his father, is not by itself sufficient, to raise an inference that undue influence was exercised on the testator or that her free will was manipulated into executing a will in favour of the beneficiary. The first appellate court has, therefore, rightly concluded

that mere presence of the beneficiary, his father and his mother, does not give rise a suspicious circumstance. Apart from the fact that the testator and his father or his mother were present at the time of execution of the will, or that the beneficiary served her mother, there is no other evidence whether adduced by the appellants or elicited from the cross-examination of attesting witnesses and others, that would raise an inference of an influence as may be categorised as “undue” and sufficient to discard the will under Section 61 of the Act.

The other alleged suspicious circumstance, namely, rejection of the adoption deed, in my considered opinion, is not sufficient to raise an inference that the will in question is a suspicious document. The adoption deed was rejected on the ground that the adoption was said to have been made 16 years prior to the execution of the adoption deed and without proving ceremonies of an adoption, the names of the daughters of Kishni were not mentioned, a civil suit filed by the mother of Madan Lal was decreed as Smt. Kishni filed a written statement admitting a plea that Ghanni, mother of Madan Lal and Suhagwati, another daughter, were the only legal heirs, etc., the admission register from a school reveals that Madan Lal was recorded as the son of Dawarka Parshad, his natural father. The adoption has not been rejected on the ground that there is any fraud or that the testator was coerced into executing the adoption deed but by holding that the adoption has not been proved. The adoption deed was apparently executed by Smt. Kishni to secure succession to her estate in the manner she desired. This apart, there is no

evidence on record that Smt. Kishni was suffering from any disease or so incapacitated as to be unable to exercise her free will and execute a will. In fact, Kishni died 3 ½ years after the execution and registration of the will, on 12.3.1979. The first substantial question of law is, therefore, answered against the appellants.

A perusal of the impugned judgment reveals that the first appellate court has considered the factors noticed by the trial court and after dealing with them, has held that these factors do not constitute suspicious circumstances sufficient to discard the will. The second substantial question is, therefore, also answered against the appellants.

Thus, finding no merit in the appeal and no substantial question of law, that may be answered in favour of the appellants, the appeal is dismissed, with no order as to costs.

19th October, 2015
VK

(RAJIVE BHALLA)
JUDGE