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

% *judgment delivered on: 14.05.2018*

+ **FAO 152/2016**

HARDEEP SINGH

..... Appellant

Through: Ms. Arati Mahajan Shedha with
Ms.Swati and Mr. Manoj Kumar, Advs.

Versus

MOHINDER SINGH & ANR

..... Respondents

Through: Mr. H.M. Singh, Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

CM No. 6450/2018

1. This application under Order 41 Rule 27 read with section 151 CPC seeks production of additional evidence by way of getting the signatures of the executors on three documents verified from the CFSL. The signatures sought to be verified are of i) Late Smt. Joginder Kaur, inter alia on the plea that the Will dated 01.09.2014 is forged; it was never executed by her; that her actual Will is dated 07.09.2014, as relied upon by the appellant; ii) the No Objection Affidavit dated 08.12. 2014 filed by the respondent no. 1; and iii) the appellant's signature on it.
2. The Court is of the view that the forensic examination and evidence ought to have been sought by the appellant before the Trial Court. He had

every opportunity for doing so. But, he chose not to do so. Furthermore, he has not sought any relief in terms of the Will dated 07.09.2014 referred to by him. He has not sought the relief of probate apropos it. The Will propounded by the respondent's father was dated 01.09.2014; trial apropos the same was held; evidence was recorded and once it was proven, the probate was granted. There was no occasion to doubt the proven Will because the appellant led no evidence to suspect its veracity. Furthermore, he did not seek to prove the Will dated 07.09.2014 mentioned by him.

3. In view of the above, the application is dismissed.

FAO 152/2016

4. On 23.01.2018 the Court had, inter alia, passed the following order:

“..... 1. The learned counsel for the respondent No. 1 states that by order dated 06.04.2016, the appellant had been protected from dispossession from the suit property till the next date of hearing. However, this protection was not extended on the subsequent date. Therefore, in effect the appellant has no protection legal today. He further submits that the decree holder is 78 years old, he and his late wife suffered harassment for a long period by the appellant. To substantiate this grievance, he refers to the document of inheritance (PW-1/H). He also refers to various police complaints regarding the harassment caused by the appellant to the parents. He submits that the impugned order does not suffer from any infirmity and the appeal ought to be dismissed.

3. It is the appellant's case that the Will, Ex. PW1/A is forged because it could not have been signed on 01.09.2014, since that is the day on which his mother was admitted to a hospital for the treatment of cancer. On the basis of documents obtained on 14.10.2015 through RTI, the mother was “registered with Institute of Liver and Biliary Sciences (ILBS) as an OPD patient on 1st September, 2014 at 9:11 a.m., her vitals were checked at 9:12 a.m. and the patient

was given consultation by Dr. Dipanjan Panda, Assistant Professor (Oncology) at 10: 29 a.m. The patient was admitted in Day Care on 1st September, 2014 at 11:14 a.m. for Chemotherapy and discharged at 2:25 p.m.....”

4. The learned counsel for the appellant also submits that the alleged Will could not have been signed by his mother in favour of his father/respondent No. 1 because she was admitted to the aforesaid hospital at about 9.00 a.m and administered Chemotherapy at 11.14 a.m., therefore, she was not in a position to sign the documents.

5. During the course of hearing the petitioner has stood up in the Court a number of times. At 14.52 hours, he has again interrupted the Court proceedings and says that his lawyer is unable to represent his case properly. In the circumstances, Mr. Prateek Tanwar, Advocate, seeks discharge of his vakalatnama. Accordingly, his vakalatnama is discharged.

6. The appellant argues in person. He refers to the impugned order and argues primarily in English and then in Hindustani as well. He fully understands the import of the judgment.

7. It is his case that since his mother was admitted to the hospital from 9.11 a.m. to 2.25 p.m., she could not have signed the Will, which according to his father, was signed around 12 noon. He submits that, therefore, the medical certificate, Ex. PW 1/B issued by Dr. P. K. Gupta, the local Consultant, Physician and Cardiologist, cannot be relied upon. He further submits that he never issued any NOC to his father apropos his mother's estate nor has she disinherited him from the same. It is his case that the complaints, if any, made to the police against him, were by the father and never by the mother. He relies upon an intimation to the SHO dated 26.08.2014, Ex. PW1/L. His primary argument is that since the mother was admitted in the hospital, she could not have signed the Will at her residence. According to him, this would rather challenge

the law of identity, as a person cannot be present at two places simultaneously.

8. The substance of his argument is based upon the testimony of his father given in his cross-examination on 14.09.2015, which reads as under:-

“.....Ques: Can you say as to what all work did Late Smt. Joginder Kaur performed on the day she executed the Will?

Ans: Since she was unwell, therefore, I saw to it that she did not perform any work and took rest on bed for most of the time.

I do not recall at what time was the Will executed. On that day, she remained in the house whole day long. The Will was first got typed according to the instructions of Late Smt. Joginder Kaur and then it was got signed from her. Doctor was also called at that time to assess the mental condition of my wife. The doctor was called on the same day when the Will was executed by my wife to assess her fitness to execute a Will. The doctor visited my wife around 12 O' Clock noon at our house. The doctor left after issuing the fitness certificate. Thereafter, my wife signed the Will in presence of the witnesses.

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Ex.PW1/D and E were drafted by me at the instructions of Late Smt. Joginder Kaur and they were signed by her. It is correct that the publication of disowning /debarring Shri Hardeep Singh was published in the newspaper 'The Tribune' and 'Dainik Tribune' in my name pursuant to my public notices Ex.PW1/I and J. It is correct that these were not issued by Late Smt. Joginder Kaur. It is wrong to suggest that the joint declaration Ex.PW1/H is a false and forge document.

The Will was first attested by the attesting witness Mr. Sharma and then by Mr. G V Singh. I do not remember whether the witnesses signed with the same pen as Late Smt. Joginder Kaur. The witnesses also recorded their addresses while signing the Will.

Because I had to take care of Late Smt. Joginder Kaur, neither did I have time to visit various offices for registration of the Will nor did I consider its registration necessary. Late Smt. Joginder Kaur never asked me or insisted upon for registration of the Will."

9. *The Court would note that the impugned order has granted the Letters of Administration not on the basis of the mere statement that the Will was signed at 12 o'clock at the residence but on the basis that there was no denial or doubt about the execution of the Will (Ex. PW1/A) by the mother i.e. her signatures were not contested. The Trial Court also considered the fact that the two witnesses supported the execution of the Will, one of whom, namely, Mr. G. V. Singh (PW2) was cross-examined extensively while no searching question was asked from the other witness.*

10. *The deceased Ms. Joginder Kaur, is survived by her husband- Mr. Mohinder Singh/respondent No. 1 and two sons, one of whom is the appellant and the other is Mr. Gurdeep Singh-respondent No. 2. The learned counsel for the respondent No. 2 submits that the said respondent is ordinarily a resident of Norway and has supported the case of his father-respondent No.1 in the probate petition as well as in this appeal i.e. he has no objection to the inheritance of the property in terms of the Will, Ex. PW1/A.*

11. *The appellant contends that:-*

- (1) *The mother could not have bequeathed the entire suit property i.e. Flat No.8067, Sector-D, Pocket A, Vasant Kunj, New Delhi, since she was only a co-owner of the same. Before the Trial Court, the appellant had objected to the bequeathal on the ground that the said Will purported to transfer all assets owned by the mother, which was not possible*

since she owned only half of the said property alongwith the father.

- (2) The second ground raised was that the attesting witnesses had stated that the Will, Ex. PW 1/A was apropos the entire suit property, whereas the mother was only owner of 50% thereof, hence, the Will could not be relied upon.*
- (3) Furthermore, Mr. G. V. Singh (PW2), the attesting witness to the Will, had stated that he had only put his signature as a witness of the Will, but perusal of the same would show that he has mentioned his address as well.*
- (4) It was also contended that the medical certificate, Ex. PW1/B issued by Dr. P. K. Gupta could not have been relied upon since it did not refer to her being a cancer patient and the said doctor could not have assessed her mental state apropos her ability to execute a Will, especially the fact that when the medical certificate was issued, purportedly at 12 in the afternoon, the appellant's mother was undergoing treatment at ILBS, from where she was discharged around 2.25 p.m.*

12. The Court notes that each of the aforesaid contentions was addressed and rejected by the learned Trial Court. The reason being that the use of the word 'owner' in the Will, Ex. PW1/A covers the term 'co-owner' and since the suit property not being demarcated, she could have transferred her interests therein to whomever she desired. The Trial Court also reasoned that for the grant of probate, the Court is to look at whether the signature appended on the Will was disputed or not. In the present case, the mother's signature on the Will was not contested. The Trial Court reasoned as under:-

"18. As far as the discharging of onus of the issue and plea that the Will is a forge and fabricated document, it is found that it is not the case of respondent no.3 that signatures of Late Smt. Joginder

Kaur appearing on the Will EX.PW1/A are forged. The execution of this document has apparently not been denied by the respondent in so far as suggestions put to the petitioner and DW-1 only talks of that she was not in a sound state of mind to execute the Will. Once the signatures of deceased were not disputed by the objector, I see no strength in the plea that petitioner ought to have examined a handwriting expert in order to prove that the signatures appearing on the Will actually belong to deceased Smt. Joginder Kaur.

19. As regards the aforesaid pleas that the specific share is not mentioned in the Will, the usage of the word owner by the testator covers within its ambit the term co-owner. The flat in question which was jointly owned by the petitioner and the deceased and no specific demarcation of each other share by metes and bound was available.

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21. As regards the plea that on the date of execution of Will Ex.PW1/A i.e. 01.09.2014 the deceased was taken to hospital in a daycare facility but as per cross-examination of PW-1 deceased remained in the house. It is also argued that PW-2 did not speak of daycare visit of deceased on the date of execution of the Will. I do not see any strength in this plea since it is admitted case of the parties that deceased was a Cancer patient and a routine visit to the hospital for a few hours of daycare should not be allowed to be made a tool to dislodge the otherwise per se believable execution of Will. Moreso, when it is not the case of the parties that Smt. Joginder Kaur expired on 01.09.2014 itself. She breath a last only on 10.11.2014 after around two and a half months. Also this Court has to bear in mind the petitioner himself is a frail and aged man of 76 years and is not expected to have a photographic memory of each event of that day.

13. It then referred to the judgments of the Supreme Court in **Gopal Swaroop vs. Krishna Murari Mangal & Ors, 2010 (12)**, **H. Venkatachala Iyengar vs. B N Thimmajamma, AIR 1959 SC 443** and **M B Ramesh (D) By LRs. vs. K.M. Veeraje Urs (D) By LRs. & Ors., JT 2013 (7) SC**, to the effect that two witnesses have to show that the signature on the document was put in their presence; that it is ideal to prove this fact with mathematical certainty apropos proof of the Will and, therefore, the test to be applied is the test of satisfaction of a prudent mind in such matters. Finally, that the Court's role in matters concerning Wills is limited to examining whether the instrument propounded as the last Will of the deceased is or is not done so by the testator, and whether it is the product of a free and sound disposing mind.

14. In this regard, the Court has referred to section 63 of the Evidence Act, 1872, and came to the conclusion that Mr. G. V. Singh (PW2) having stated that the deceased had signed the Will in his presence, the text was prepared by him at her directions, more than satisfied the requirement of the aforesaid provision.

15. The impugned order then referred to certain complaints made against the appellant by the deceased herself and through the publication in the Newspaper in a National Daily Ex. PW1/L & J, to contend that the appellant had been disowned by his mother from her immovable property. However, the Court did not return a finding on the said claim nor has issued the letter of administration on the said grounds.

16. The issue to be determined today is whether the Will, Ex. PW 1/A, could have been signed on 01.09.2014, a day on which the deceased was admitted in ILBS in the Day Care ward for the administration of chemotherapy. The records reflect that she was admitted at 9.11 a.m. in the said hospital and was discharged at 2.25 p.m. There is nothing on record to doubt her mental ability to have executed the

documents, either before she went to the hospital or afterwards.

17. The assertion that the father's deposition of the documents having been executed at 12 in the afternoon at the residence itself belies his claim and is untenable because as per the probate petition, the Will was executed on the said date, but the precise time of execution is nowhere mentioned. Furthermore, the deposition of two attesting witnesses apropos the execution of the Will, Ex. PW 1/A in their presence on the said date fortifies the fact that the Will could well have been signed by the deceased after she returned home from the hospital later on in the evening. The deposition of respondent No.1 apropos the time of the execution of the said Will can be disregarded so long as the other facts necessary for grant of letters of administration are available on record. These facts are that the two witnesses stated that the document had been signed in their presence; nothing has been found on the record that the mother was of unsound mind or not in a position to execute a document on the said date; and her signature not having been doubted, therefore, there was no impediment for the Trial Court to have passed the aforesaid order. The reliance on the medical certificate Ex. PW1/B, issued by Dr. P. K. Gupta, would be of no consequence and it too can be disregarded.

18. In view of the above, the Court prima facie finds that the appeal is without merits. The Court is inclined to dismiss the appeal, however, in the interest of justice, one last opportunity is granted to the appellant considering the appellant's submission that his case could perhaps have been better and more feistily addressed by counsel. He requests that a final order may not be passed. He seeks legal assistance and representation through counsel.

19. In the circumstance, Mr. Raghav Mahajan, Advocate, present in the Court and Mr. H. M. Singh, the learned counsel for respondent No.1, submit that they will

assist the appellant of how he could avail legal aid from the Delhi High Court Legal Services Authority.

20. *At the appellant's request, re-notify on 15.02.2018...*”

On subsequent dates, the appellant has been represented by counsel.

5. The case was heard on various dates and the parties had also explored the possibility of an amicable settlement which did not fructify into anything worthwhile. Referring to para 18 of the impugned order, the learned counsel for the appellant states that the appellant had at no stage accepted the execution of the documents and the Will of his late mother dated 01.09.2014, indeed, he has all along contested the same and sought to rely upon a specific Will dated 7.9.2014. Therefore, there is an error in the said paragraph.

6. Be that as it may, the Court is of the view that even if the said noting in the paragraph is excised, the Will propounded by respondent no.1 i.e. husband of Late Smt. Joginder Kaur is otherwise proven as per the Indian Evidence Act, 1872 as well the Hindu Succession Act, 1956 i.e. one of the two witnesses has deposed in favour of the Will being executed in his presence.

7. In the circumstances, the aforesaid protestation that the appellant had not accepted the signature of his deceased mother on the Will propounded by the father, would be of no consequence. The conclusion arrived at in the impugned order would, nevertheless, be sustainable on the strength of the separate and independent evidence adduced by the respondent/father.

8. In view of the above, the appeal has no merit and is accordingly dismissed.

9. However, at this stage, Mr. H.M. Singh, the learned counsel for the respondent/father states that although the father may have wanted to live with his son, but due to acrimonious differences between them, for a decade and a half, it is not possible for them to live together. He says that there is a history of the father being assaulted by the son. He is fearful of the son. The father is 78 years of age and in the twilight years of his life, he would like to have a harassment free life and time to grieve with dignity over the loss of life partner- his wife; as well as to settle his temporal accounts as per his wishes. Therefore, he does not wish his son to stay with him. However, although he is not bound to maintain his son who is 44 years old and should be earning his own living, nevertheless, out of goodness of his heart and paternal concern, he is ready and willing to pay his son an amount of Rs.12,000/- per month directly into the son's account out of the Rs.32,000/- monthly pension that he receives. He says that this amount can be paid in five days of the pensionary amount being credited to the father's account.

10. How the father expends his pension monies is his concern, if he wishes to give some of it to his son, that is his choice. There can be no order regarding it.

11. The appeal is disposed off in the above terms.

NAJMI WAZIRI, J

MAY 14, 2018/acm