



* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 04.07.2022

+ **FAO 63/2021 & CM APPL. 5632/2021**

AMRIK SINGH Appellant

versus

STATE & ORS. Respondents

Advocates who appeared in this case:

For the Appellant: Mr. Lal Singh Thakur, Advocate.

For the Respondents: Ms. Tamanna Pankaj, Advocate for R-1.
Mr. K.N. Bhargavan and Mr. Saurabh Bhargavan
Advocates for R-2.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J.

1. Appellant impugns judgment dated 13.12.2019, whereby the petition filed by respondent No.2 Inder Pal Singh seeking grant of probate of the registered Will dated 10.03.1999 executed by late Sh. Hazara Singh has been dismissed.

2. Appellant is one of the sons of late Sh. Hazara Singh and had filed objections to the petition filed by respondent No.2 Sh. Inder Pal Singh. One of the grounds taken in the objection was that late Sh. Hazara Singh had subsequently executed a Will dated 12.09.2011 (registered on 14.09.2011)



and cancelled the earlier Will dated 10.03.1999.

3. Respondent No.2 had filed the subject petition seeking probate of the Will dated 10.03.1999 and appellant had set up a second Will dated 12.09.2011 (registered on 14.09.2011).

4. Trial Court held that the Will dated 10.03.1999 had not been duly attested by two witnesses and as such could not be treated as the last Will of late Sh. Hazara Singh and could not be acted upon.

5. With regard to the Will dated 12.09.2011 (registered on 14.09.2011) the Trial Court has held that the same was full of suspicious circumstances and had also not been proved in accordance with law to be the legal, valid and genuine Will executed by the deceased of sound disposition of mind and of his free volition.

6. Appellant who had set up the Will dated 12.09.2011 (registered on 14.09.2011) seeks to impugn the order to the extent that letter of administration has not been granted in respect of the Will dated 12.09.2011 (registered on 14.09.2011).

7. In so far as the Will dated 10.03.1999 is concerned, respondent No.2, who was the petitioner before the Trial Court, has not impugned the said order whereby it has been held that Will dated 10.03.1999 has not been duly executed.

8. Even during the submissions before this Court it was conceded by counsel for respondent No.2 that respondent No.2 was not insisting upon



grant of probate/letter of administration and was not seeking any rights there under. Consequently, no arguments were addressed before this Court with regard to the Will dated 10.03.1999, its validity or otherwise.

9. Late Sh. Hazara Singh died on 06.05.2012. His wife i.e. the mother of the parties had pre-deceased him. On his death late Sh. Hazara Singh left behind two sons and four daughters.

10. By alleged Will dated 10.03.1999, Hazara Singh bequeathed his estate equally between his sons to the exclusion of his daughters. It is alleged by the appellant that late Sh. Hazara Singh executed a second Will dated 12.09.2011 (registered on 14.09.2011) cancelling his earlier Will dated 10.03.1999 and bequeathing everything in favour of the appellant Amrik Singh.

11. It is noticed that Amrik Singh was the only objector to the petition seeking grant of probate/letter of administration. His sisters had supported the Will dated 10.03.1999. Even Amrik Singh has admitted the execution of the Will dated 10.03.1999 but claims that said Will was superseded/revoked by a subsequent Will dated 12.09.2011 (registered on 14.09.2011).

12. Sh. Hazara Singh for several years prior to his death was residing with Inder Pal Singh in United Kingdom. It is alleged by Amrik Singh that Inder Pal Singh turned out Hazara Singh from his house on 03.09.2011 and consequently he flew to Delhi and executed the Will dated 12.09.2011 (registered on 14.09.2011).



13. The Trial Court has observed that original Will dated 12.09.2011 (registered on 14.09.2011) was not filed during trial but was only produced at the time of final arguments that also at the directions of the Court.

14. With regard to the Will dated 10.03.1999 the Trial Court has held that the Will was attested by only one witness. Perusal of the Will though shows that it bears the signatures also of one Sh. J.V.Malik, Advocate who as per the endorsement of the Sub Registrar has signed as witness No.2, however, since respondent No.2 has not sought to impugn the subject order and has during arguments not pressed his prayer with regard to grant of letter of administration of Will dated 10.03.1999, no comment is being made about the validity or otherwise of the said Will.

15. With regard to the Will dated 12.09.2011 (registered on 14.09.2011) the Trial Court has held that the execution of the Will is full of suspicious circumstances.

16. It is an admitted position that the deceased was residing with Inder Pal Singh in United Kingdom for over 10 years. The contention of the objector/appellant that he had been turned out by Inder Pal Singh from his house on 03.09.2011 and had accordingly come to India was found to be unsubstantiated for the reason that late Sh. Hazara Singh had come to India on a return ticket which clearly established that he had no intentions of permanently settling in India or abandoning his son in United Kingdom.

17. It is noticed that under both the Wills the daughters have been excluded. As per the Will dated 10.03.1999 the property was bequeathed



equally between Inder Pal Singh and Amrik Singh his two sons. However, by the alleged Will dated 12.09.2011 (registered on 14.09.2011) all legal heirs except Amrik Singh were allegedly excluded from inheritance.

18. The reasoning given for excluding the daughters from inheritance has been mentioned in both the alleged Wills, however, there is no reason mentioned in Will dated 12.09.2011 (registered on 14.09.2011) as to why Inder Pal Singh, the son with whom Hazara Singh had been residing for over 10 years has been excluded. The sisters have not challenged their disinheritance. Rather they have supported the Will dated 10.03.1999.

19. The dates are also very crucial. Hazara Singh travelled to India on 03.09.2011 and is alleged to have executed the second Will on 12.09.2011 (registered on 14.09.2011) without any rhyme or reason excluding his son with whom he had been residing for about a decade.

20. Respondent No.2 has also placed on record several photographs as well as correspondence to show that the relations between Hazara Singh and respondent No.2 and his family were very cordial. No reason or circumstance has been mentioned or brought on record as to why the deceased disinherited his other son, with whom he was residing for several years.

21. The allegation that Inder Pal Singh had turned out Hazara Singh from his house was found by the Trial Court to be false based on the fact that the photographs as well as material on record categorically showed that Hazara Singh was cordially living with Inder Pal Singh and his family.



22. Further material was brought on record to show that the deceased was getting medical and pensionary benefits from the UK Government. The fact that he had come to India on a return ticket substantiated his desire to return to his other son in UK.

23. With regard to the execution and attestation of the Will dated 12.09.2011 (registered on 14.09.2011), propounded by the appellant, the Trial Court has noticed that both the attesting witnesses were the subordinates of the appellant in Indian Airlines where all three were working together. It was admitted during cross examination that the appellant used to certify the overtime hours of the attesting witnesses and allot work to them and their work assessment was also done by him.

24. The Trial Court has referred to the testimony of the objector/appellant Amrik Singh wherein he had deposed that the deceased never told him that he intended to revoke the earlier Will dated 10.03.1999. This fact has been specifically noticed by the Trial Court in its order.

25. The Trial Court has further noticed that the allegation of the appellant was that he was not aware of the Will dated 12.09.2011 (registered on 14.09.2011) and became aware of the same only after his father's demise. Though he denied the suggestion that he had accompanied the deceased to the Sub Registrar's office, he, however, deposed that he had dropped him at the office of the Sub Registrar on the said date. However, states that he did not enquire from his father about the purpose of going to the Sub-Registrar's office.



26. Sh. J.N.Rajan who is one of the attesting witnesses to the second Will dated 12.09.2011 (registered on 14.09.2011) in his evidence by way of affidavit stated that he knew the deceased for number of years as they had worked in Indian Airlines together and had friendly relations with each other and used to have get together frequently. He had deposed that the deceased has signed the Will in his presence as well as in the presence of the other attesting witnesses. In the evidence affidavit it is contended that both the witnesses along with the deceased went to the office of the Sub Registrar together. However, during his cross examination he admitted that he was working with the objector Sh. Amrik Singh in Air India and had never worked with the deceased. He deposed that the evidence affidavit was got prepared through a counsel who had called him on the date of preparation but did not know the details of the counsel.

27. With regard to his friendship with the deceased said witness categorically admitted that he was friends with the objector but could not give any details about the deceased or his family. He however, admitted in his cross examination that he did not know the deceased and had never met him prior to becoming a witness and had met the deceased for the first time at the Sub Registrar's office.

28. Trial Court has noticed several contradictions in the evidence affidavit where Sh. J.N. Rajan claimed to be friends with the deceased and having frequent get together with him *vis-à-vis* his cross examination where he denied having known the deceased or having met the deceased prior to the visit to the Sub Registrar's office.



29. With regard to the other attesting witness R.K.Singh, Trial Court has noticed that the evidence affidavit was identical to that of Sh. J.N. Rajan.

30. With regard to the details of the deceased and his family, the Trial Court has noticed that the witness was as blank as the other attesting witness and deposed that he had not met the testator prior to the execution of the Will which was contrary to the averments in the evidence affidavit.

31. Trial Court has also noticed several contradictions in the testimonies of both the alleged attesting witnesses with regard to what transpired in the office of the sub Registrar.

32. One of the daughters of the deceased had also appeared as a witness. She supported the Will dated 10.03.1999 and rather deposed that there was no reason for the deceased to have changed his mind or make a second Will bequeathing the entire property to the objector.

33. Said sister had deposed that the deceased had suffered ill-treatment at the hands of the objector and his family which compelled him to take refuge with Inder Pal Singh in UK. She further testified that deceased was in mid 80's and was suffering from multiple ailments due to old age and used to forget people and events and was not in good physical and mental health.

34. Trial Court referring to the testimonies of the attesting witnesses of the Will dated 12.09.2011 (registered on 14.09.2011) held that the alleged attesting witnesses were not independent witnesses and had attested the



Will on asking of none other than the objector himself. They did not know the deceased previously and had met him in the office of the Sub Registrar for the first time. They were subordinate staff of the objector and worked under his control and had never worked with the deceased or knew anything about the deceased. The evidence affidavits were also prepared through the appellant's own counsel and he had brought them to Court for deposition in his favour.

35. Trial Court has held and as noticed hereinabove also there are numerous material contradictions between the evidence affidavits and the depositions during cross examination making the attesting witnesses as unreliable witness.

36. One such instance noticed by the Trial Court is that during cross examination one of the witnesses had admitted that the Sub Registrar had not asked anything from the deceased at the time of registration of the second Will which established that they had falsely stated in their evidence affidavit about interaction between the Sub Registrar and the deceased.

37. With regard to the objector/appellant himself the Trial Court has noticed that he also contradicted himself with regard to accompanying the deceased to the office of the Sub Registrar for execution and registration of the second Will.

38. At one place he had deposed that he had accompanied the deceased and at the other place he had deposed that he had not accompanied the deceased and yet again deposed that he had only dropped the deceased at



the Sub Registrar's office and then left for his house. Trial Court has categorically held that the evidence given by the objector was not trustworthy.

39. Trial Court on perusal of the photographs which were admitted by the objector held that the deceased was having a very happy life in UK and was enjoying his life with Inder Pal Singh and his family who were caring and affectionate to him. Trial Court has held Inder Pal Singh and the daughters of the deceased to be trustworthy witnesses.

40. Said witnesses have deposed that the deceased was suffering from short term memory loss on account of his old age and was in a vulnerable state of mind and susceptible to manipulations at the time of the alleged execution of the second Will.

41. Trial Court has held that no reason has been mentioned as to what necessitated the cancellation of the earlier Will and disinheriting Inder Pal Singh with whom the deceased had been living very happily for over 20 years without any complaint.

42. The Trial Court has noticed that there are several suspicious circumstances in the execution of the Will dated 12.09.2011, which, have not been explained by the propounder of the Will i.e. the appellant.

43. As noticed hereinabove there are several suspicious circumstances and contradictions in the testimonies of the objector as well as the alleged attesting witnesses of the alleged Will dated 12.09.2011.



44. Perusal of the testimony of the witnesses as well as their cross examination shows that no error has been committed by the Trial in holding that the objector/propounder of Will dated 12.09.2011 has not been able to satisfactorily explain the suspicious circumstances surrounding the alleged execution of the Will.

45. The contradictions in the testimony of the alleged attesting witnesses with regard to their relationship with the deceased, the objector, the manner in which the Will has been executed, go on to establish that the alleged Will dated 12.09.2011 is not a due and validly executed Will of late Sh. Hazara Singh.

46. In view of the above, there is no infirmity in the impugned order declining to grant letter of administration of the alleged Will dated 12.09.2011.

47. Consequently, there is no merit in the appeal. The appeal is dismissed.

SANJEEV SACHDEVA, J

JULY 04, 2022

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