

04.09.2023
Court No.13
Item No.36
AP

FA 313 of 2013

**Sri Deb Kumar Das
Vs.
Sri Pratap Chandra Haldar and Ors.**

Ms. Sohini Chakroborty
Mr. Falguni Majhi

... For the Appellant.

1. The appeal is directed against a judgment and/or order dated 29th June 2013 passed by the Additional District and Sessions Judge, Fast Track 2nd Court at Burdwan in O.S. Will Case No.1/05 renumbered as 145/02.

2. The original applicant for probate of Will of late Bhairab Chandra Das is one Pratap Chandra Haldar, son of the sister of the testator. Probate was sought of the Will dated 6th August 1993. The wife of the testator pre-deceased him. The natural legal heirs are a son Deb Kumar Das, daughter Purnima Sadhu and another daughter Bijali Sen.

3. The testator committed suicide and died on 17th July 2002.

4. The testator had earlier executed a registered Will dated 4th August 1986 by which he bequeathed all his property to his only son Deb Kumar Das.

5. By the said Will dated 6th August, 1993 the testator passed on all his properties to Pratap Chandra

Haldar, his nephew and his inherited his son and daughters.

6. Upon the Will being cited, Deb Kumar Das, the son of the deceased, filed an objection. The two daughters did not participate or challenge the Will.

7. On receipt of the objection, the application for probate was converted into a suit. The objector had stated that the Will was procured by fraud. The testator was a regular alcoholic and had no mental capacity. He would have signed a Will in favour of anybody who offered him a bottle of alcohol.

8. It was further stated that the testator was hard of hearing and had poor eyesight. The attesting witnesses were intimated with the beneficiary and the propounder. The Will was manufactured taking advantage of the unsoundness of the mind of the testator.

9. The Court below on receipt of the objection framed five several issues, which are set out hereinbelow:-

“1. Is the petitioner entitled to get probate of the Will?

2. Has the Will been duly executed properly by the testatrix?

3. Is the Will in question last Will of the testator?

4. *Has the Will genuine, legal, valid and has it been executed with full sense and sound disposition capacity?*

5. *To what other relief, if any, the petitioner is entitled?”*

10. Two witnesses deposed on behalf of the executor namely Pratap Chandra Haldar himself (PW-1) and Kamal Chandra Ghosh (PW-2), an attesting witness. The objector Deb Kumar Das, son of the testator, deposed himself as DW1.

11. Several documents particularly the holographic Will and a suicide note of the deceased were brought on record. A handwriting expert report was considered. The said report confirmed the signature of the testator on the Will by comparing it with that of the suicide note.

12. The Court below carefully examined the evidence on record and with a detailed and succinct judgement granted probate of the Will.

13. Ms. Sohini Chakroborty, learned counsel for the appellant Deb Kumar Das, would argue that the Court below had failed to notice the following suspicious circumstances:-

(a) By the earlier Will dated 4th August, 1986, the testator had bequeathed all his properties to his son and also recorded love and affection to his granddaughter (daughter of his son). In the

subsequent Will dated 6th August, 1993, there was no mention of his granddaughter.

(b) The scribe of the Will did not come forward to depose.

(c) There was no draft Will prepared or produced.

(d) The executor and the attesting witness distinctly remember the date and time of execution of the Will and registration thereof, but could recollect the date on which the testator decided to bequeath the property to his nephew.

(e) The testator has stated that he has consulted his sons-in-law before changing his earlier Will of 1986 but the sons-in-law did not come forward to depose in the suit.

(e) The testator was with poor eyesight and could not have written the Will in question or signed it.

(f) Pratap Halidar's father had an acrimonious relationship with the deceased. It is suspicious as to why the deceased would find faith and affection on the propounder.

(g) The attesting witness was a good friend of the respondent but not known to the testator.

14. This Court has very carefully considered the objections of the learned counsel for the appellant. It is noticed that since after the demise of the deceased wife, he was lonely and depressed. The testator's son, the appellant, left the house of the testator to live separately. There were serious differences and acrimony between the appellant's wife and the testator. The appellant's wife did not take care of the testator.

15. This Court also notes from the evidence on record that the signature of the testator on the Will has substantially matched with the signature on the suicide note of the deceased. The handwriting expert has certified as such.

16. The suicide note was written in an orderly and empirical manner. This would clearly show that the testator was of clear mind and could see properly. His signature on the suicide note was clear and normal. Therefore if the testator was substantially sound visually in 2002, his vision in the year 1993 must have been much better. He must have been of clearer mind in 1993.

17. Admittedly, the executor nephew living at a distance of 2 km from the house of the testator took very good care of his uncle. The testator had indicated in his holographic Will that he has bequeathed a portion of his house to his daughter Bijali Sen. The other daughter was prosperous and living happily with

her husband. The testator had also spent substantial amount of money in getting his daughters married.

18. These are a few factors that weighed with the Court below and correspondingly weigh with this Court. The testator had provided for his daughter sufficiently. The son of the testator did not take care of him. The testator was lonely and may have taken to alcohol to deal with his solitude. The wellbeing of the testator to whatever extent was only ensured by the propounder. The testator was of sound mind and clear eyesight in the year 1993.

19. The argument of Ms. Chakraborty that while the executor and the attesting witness appeared to distinctly remember the time and place of execution of registration of the Will, they do not have clear memory of the time when the testator had decided to bequeath his properties to the nephew, might sound inconsistent, but this Court is not convinced that the same by itself would constitute a suspicious circumstance.

20. The non-examination of the scribe and the absence of evidence from the attesting witnesses as regards the mental health of the testator as argued by Ms. Chakraborty, do not by themselves indicate any suspicious circumstances of the Will.

21. This Court also does not see any suspicious abnormal circumstance in the attesting witness being a

long standing friend of the propounder. It is quite possible that he may have met the testator a few times.

22. The signature on the Will appears to be clear as per the handwriting expert. The suicide of the testator lends credence to the case of the propounder that the testator was lonely in the later part of his life particularly after the death of his wife and the son, daughter-in-law and his daughters did not come forward to take care of him.

23. In the above circumstances, taking an overall view of the matter, this Court is of the view that the Court below has considered all relevant factors to hold that the respondents/propounders have been able to dispel all suspicious circumstances surrounding the execution of the Will dated 6th August, 1993. The appellant has not been able to demonstrate any further or other suspicious circumstances. The impugned order, therefore, cannot be faulted.

24. This Court upholds the said impugned judgement.

25. Hence, FA 313 of 2013 is dismissed.

26. Interim orders, if any, shall stand vacated.

27. There shall be no order as to costs.

28. Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Rajasekhar Mantha, J.)

(Supratim Bhattacharya, J.)