



2024:DHC:3138



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

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Judgment reserved on: 31.01.2024
Judgment pronounced on: 22.04.2024

+ CM(M) 507/2022, CM APPL. 25911/2022—stay

ROHIT MANCHANDA & ANR.

..... Petitioners

Through: Mr. Chander M. Maini, Mr. B.K.
Wadhwa and Mr. Mayank Maini,
Advts.

versus

MOHIT MANCHANDA

..... Respondent

Through: Mr. Vinay Chaurasia, Adv.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

1. In the present petition, a controversy revolves around the signatures of the respondent/plaintiff with reference to an affidavit dated 17.05.2004 and documents Ex.PW1/DA (colly) which according to the petitioners /defendants were of the respondent/plaintiff. The respondent/plaintiff denies the signatures on the documents, therefore, the petitioners approached the learned Trial Court by way of an application filed under Order XXVI Rule 10A of Code of Civil Procedure, 1908 (hereinafter referred as “CPC”) read with Section 45 of the Indian Evidence Act, 1872 (hereinafter referred as “IEA”) and Section 14A of Specific Relief Act, 1963 (hereinafter referred as “SRA”). The learned Trial Court has rejected the request of the petitioners and dismissed the application. Aggrieved with the impugned order dated



26.02.2022, the petitioners have filed the present petition under Article 227 of the Constitution of India, 1950.

2. The background matrix of the present case reveals that the petitioners and the respondent herein are real brothers. In November, 2016 the respondent filed a suit for declaration for declaring the Will dated 16.08.2008 executed by Late Mr. Sham Sunder Manchanda, the father of the petitioners and respondent herein in favour of petitioner no. 1 as *void ab initio*. The petitioners contested the said suit by filing the written statement in December of 2016 after issuance of summons upon them. The learned Trial Court framed issues and thereafter the matter was fixed for plaintiff's evidence. The respondent herein filed his evidence by way of affidavit and was cross examined by the counsel for the petitioners on 13.12.2018 and 06.08.2019.

3. It is the case of the petitioners that in order to showcase the anomalies of the respondent, they filed an application under Order XXVI Rule 10 CPC read with Section 45 IEA and Section 14A SRA, seeking directions from the learned Trial Court to send the affidavit/undertaking dated 17.05.2004 as executed by the respondent herein along with other relevant documents bearing the signature of the respondent to Central Forensic Science Laboratory (CFSL) for procuring the expert opinion about the matching/legitimacy/authenticity of signature of the respondent. In the meanwhile, the respondent also preferred one application under Order VI Rule 17 read with Section 151 CPC for amendment of pleadings in the suit to which, the petitioners filed a reply thereto. Subsequently, the learned Trial Court after hearing the arguments from both the sides passed the impugned



common order thereby dismissing both the applications filed by the petitioners as well as the respondent

Submissions by the Petitioners

4. Mr. Chander M. Maini, learned counsel for the petitioners submitted that the Learned Trial Court failed to appreciate that the said suit is based upon documentary evidence and therefore, what is to be tested in the suit is the proof/authenticity/legitimacy of the documents filed by both the petitioners and respondent. Moreover, the learned Trial Court has requisite powers to send the disputed documents which forms the gist for the proper adjudication of the suit to any competent expert including CFSL.

5. Learned counsel submitted that one of the main issue centers around the signatures of the respondent and if it gets proved that the signatures on the afore-stated documents are of the respondent, then the future proceedings emanating from the said suit would come to an end and the prayer of the respondent in the plaint would become nugatory.

6. Learned counsel further submitted that the document in question pertains to the year 2004 and the attesting witnesses of the said document might not be available as of today which would seriously prejudice the case of the petitioners, thus, the learned Trial Court would have permitted the petitioners to get the authenticity of documents in question as verified from CFSL.

7. **Reliance is placed upon the following judgments.**

- i. Rytu Depot, Draksharama v. Sri Rajyalakshmi Agencies, 2013 SCC OnLine AP 628



- ii. Rama Avatar Soni v. Mahanta Laxmidhar Das & Others, (2019) 11 SCC 415
- iii. Sri S. Ramakrishna v. Sri S. Appaoah & Others, ILR 2020 KAR 1741
- iv. Mir Khairudhin v. K. Somi Reddy & Others, 2006 (2) A.P.L.J 436 (HC)
- v. S. Chinnathai v. K.C. Chinnadurai, 2010 (3) MLJ 65
- vi. Kannagi v. K. Kandasamy and Ors.

Submissions by the Respondent:

8. Conversely, Mr. Vinay Chaurasia, learned counsel for respondent submitted that the authenticity of disputed documents can be ascertained only after the completion of evidence of the parties. Moreover, the disputed documents have been notarized by Notary Public and also bear the signatures of witnesses, therefore, the same can be proved by Notary Public and witnesses.

9. It is further stated that the petitioners had moved the said application at a premature stage without adducing or producing substantial evidence pertaining to the disputed documents i.e. Ex.PW1/DA (colly) on their behalf.

10. Learned counsel for respondent submitted that the petitioners can themselves seek opinion of handwriting expert at their own cost, if required and therefore, their application was rightly dismissed by learned Trial Court.

11. It was submitted that the petitioners have filed the application and present petition with an intention to delay the proceedings in the suit pending adjudication before the learned Trial Court as no cogent reason has



been given by the petitioners for quashing the impugned order. Moreso, the petitioners are trying to shift their liabilities towards the learned Trial Court.

12. Learned counsel further submitted that the disputed documents i.e. Ex.PW1/DA (colly) relied upon by the petitioners are forged and fabricated, having forged attestation and forged signature of the Notary Public. The respondent never appeared before any Notary Public and it reiterated that the disputed documents are having forged signatures of the respondent.

13. It was submitted that the primary concern is focused on around the respondent's pursuit of declaring the Will dated 16.08.2008 null and void. Even in the event of establishing the respondent's signatures on Ex.PW1/DA (colly), it does not comprehensively resolve the underlying controversy between the parties.

14. Reliance is placed upon the judgments:

- i. ITW GSE APS &Anr. V. Dabico Airport Solutions CS (Comm) 628/2023
- ii. Mallangouda v. Smt. Uma w/o Vijay Kumar Desai &Anr. W.P. No. 201529/2017

Analysis and Conclusions

15. The respondent has filed a suit for declaration against his real brothers to declare that registered Will dated 16.08.2008 executed on 21.05.2009 by his father in favour of respondent no.1 as void ab initio.

16. The case of the petitioners is that the respondent had executed an affidavit/undertaking dated 17.05.2004, Ex.PW1/DA (colly) and had received Rs.8 lacs by way of two cheques from his parents Late Sham Sunder Manchanda and Smt. Shrin Manchanda as his full and final share in



respect of moveable and immoveable property of his parents. Therefore, the respondent and his legal heirs shall have no right, demand and share in the moveable and immoveable properties of his parents.

17. In this background, it is important to note the findings of the learned Trial Court as recorded in the impugned order which is under:-

“23. In the case in hand, the court has to adjudicate whether the Will dated 16.08.2008 registered on 21.05.2009 executed by late Sh. Sham Sunder Manchanda father of plaintiff is genuine or not. The plaintiff is challenging its authenticity, therefore, the burden is upon him to prove that the Will in question is forged and fabricated.

24. The defendants are relying upon the Affidavit/Undertaking Ex.PW1/DA(colly) in order to prove that the plaintiff has relinquished his share in the property of his parents while accepting Rs. 8 lacs from them. Though the plaintiff has denied his signatures on Affidavit Undertaking dated 17.05.2004 Ex.PW1/DA (colly) but any document on which either party denied its signature cannot be sent to CFSL for comparison of the disputed signature of a party on mere asking by a party. The nature of document and its importance to the case have to be considered first. Secondly, whether such document can be proved by other method and if it can be proved by other method, then there is no need to sent it to CFSL for comparison of disputed signatures. The defendants can prove the Affidavit Undertaking Ex.PW1/DA (colly) with the help of attesting witnesses as the said document was attested by Sh. Govind Lal Takkar and Sh. Mulkh Raj Takkar and the same is also notarized.

25. Considering all the aspects, I am of the considered opinion that the document Ex. PW1/DA can be proved by the defendants by other modes and it is not expedient in the interest of justice to sent the disputed signatures of the plaintiff on Ex.PW1/DA(Colly) along with his admitted signatures to CFSL for comparison. It is well know fact that CFSL is already over burdened with the cases pending there and it cannot be further over burdened by the documents that can be proved by the parties by adopting other modes. The rulings relied upon by Ld. Counsel for the defendants are distinguishable from the facts and circumstances of the cases as stated above. Hence, the application U/o 26 Rule 10 A of the CPC of the defendants is dismissed.”

18. It is undisputed that the respondent has denied his signatures on the said affidavit/undertaking and has pleaded that the same are forged and



fabricated documents. According to the petitioners, it is essential to prove the said documents as the proceedings emanating from the civil suit filed by the respondent would come to an end and the suit would fail. The petitioners are seeking proof of the affidavit/undertaking Ex.PW1/DA (colly) so as to establish that the respondent had relinquished his share in the property of his parents while accepting full and final amount of Rs.8 lacs from them.

19. The scope of Order XXVI Rule 10A CPC has been considered in the case of **S. Chinnathai v. K.C. Chinnadura** [2009 SCC OnLine Mad 1166] wherein it has been held as under:-

“3. In order to appreciate the contention of the parties, the provisions contended in Order 26 Rule 10A of the Civil Procedure Code need to be looked into. Order 26 Rule 10A of the Civil Procedure Code has been inserted by Act 104 of 1976. The said provision is extracted hereunder for useful reference: "10A. Commission for scientific investigation:-

(1) Where any question arising in a suit involves any scientific investigation which cannot, in the opinion of the Court, be conveniently conducted before the Court, the Court may, if it thinks it necessary or expedient in the interests of justice so to do, issue a commission to such person as it thinks fit, directing him to inquire into such question and report thereon, to the Court.

(2) The provisions of Rule 10 of this Order shall, as far as may be, apply in relation to a Commissioner appointed under this rule as they apply in relation to a Commissioner appointed under Rule 9."

A reading of the said provision would show that if a scientific investigation is required to be conducted in a suit for deciding the dispute between the parties and if in the opinion of the Court, if such investigation cannot be done before the Court, then the concerned court may issue a Commission to such person directing him to address such questions and get a report to the Court. Therefore, a specific power is conferred on the Court under Order 26 Rule 10A of the Civil Procedure Code to conduct scientific investigation for the purpose of deciding the case. In order to conduct such specific investigation, the Court has also got a power to appoint a Commissioner as indicated under Rule 10(2) of the Civil Procedure Code.”



20. It is further relevant to mention the findings of the Co-ordinate Bench of this Court in **ITW GSE APS & Anr. vs Dabico Airport Solutions Pvt. Ltd. & Ors.** [2023:DHC:7900] with reference to conducting scientific investigation under Order XXVI Rule 10A CPC through Local Commissioner. It is held as under:-

“66.The court appoints the local commissioner, under Order XXVI Rule 10A of the CPC, only to conduct a scientific investigation where, in the opinion of the court, such scientific investigation is necessary to determine any question which arises with respect to one or more of the issues in the suit, which cannot be determined by any other reasonable method.

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68. To my mind, an application under Order XXVI Rule 10A has to clearly set out (i) the question or questions arising from the issue in controversy in the suit, (ii) how the determination of said question or questions requires scientific investigation, (iii) why the scientific investigation cannot be conveniently undertaken before the Court and (iv) how the appointment of a local commissioner to carry out such investigation is necessary or expedient in the interests of justice. Even where all these criteria are satisfied, the decision on whether to accede to the applicant's request, or not, is ultimately one of the discretion of the Court. Needless to say, the exercise of such discretion, like the exercise of all judicial discretion, cannot be arbitrary, capricious or whimsical. The Court has, for its part, to remain acutely aware of the fact that the report of such a Commissioner, were he to be appointed, would constitute “evidence”. The line between directing a scientific investigation to aid in determination of the questions arising in the case, and acting, even unwittingly and in the absence of any ill intent of the applicant, as an agent to procure evidence to support the case that it seeks to set up is at times thin, and the Court has to be cautious not to overstep it.”

21. The suit of the respondent pirouette on the Will dated 16.08.2008 which according to him is not executed by his father and is forged. It is no longer res gestae that the statutory and mandatory requisites for validating the execution of a Will are different with respect to other documents of



Conveyance Deed. There is a necessity to prove a Will according to stringent requirements of Section 63 of Indian Succession Act which reads as follows:-

“63. Execution of unprivileged Wills.—

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.”

22. Moreover, Section 68 and 71 of Indian Evidence Act relate to proof of documents required by law to be attested may also be relevant.

23. Pertinently, apart from following the above provisions, the Court is also to be satisfied whether the document put forward as a Will is the last Will and testament of the deceased.

24. Needless to say, in the present suit the evidence of petitioners is yet not concluded. The petitioners, therefore, would have sufficient opportunity to prove the said documents Ex.PW1/DA (colly) by summoning appropriate witnesses to prove the documents. Even otherwise, the learned Trial Court has already taken note of the same. Moreso, the case of the respondent primarily rests on the Will of their deceased father which according to them



is a forged document, therefore, the burden of proof is upon them to prove so.

25. It is also pertinent to note that the judgments relied upon by the parties being in the factual context of the respective cases are not applicable to the present case.

26. In the considered opinion of this Court, no interference is required by this Court in absence of any infirmity with the impugned order. However, the petitioners shall be at liberty to summon the appropriate witnesses including taking help of a handwriting expert, as per law, if needed, to prove the documents Ex.PW1/DA (colly).

27. Consequently, the petition along with pending application stands disposed of.

SHALINDER KAUR, J.

APRIL 22, 2024

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