

CASE NO.:
Appeal (civil) 2117 of 2001

PETITIONER:
Hazara Bradri & Others

RESPONDENT:
Lokesh Dutta Multani

DATE OF JUDGMENT: 16/11/2005

BENCH:
ASHOK BHAN & ALTAMAS KABIR

JUDGMENT:
J U D G M E N T

BHAN, J.

Defendant/Appellant herein is aggrieved by the judgment of the Division Bench of the Delhi High Court in RFA (OS) 21 of 1980 dated 17.10.2000 wherein the Division Bench while setting aside the judgment and decree passed by the Single Judge trying the suit on the original side has decreed the suit filed by the plaintiff/respondent herein.

Sardar Sujan Singh, aged 77 years, a retired Income tax Officer executed a will on 7.12.1960 declaring (a) that after his death his wife Smt. Ram Kaur will be entitled to all his properties movable and immovable of every kind and description and further she will have full control and right over the income from the immovable property; (b) that Smt. Ram Kaur will not be entitled to sell, mortgage, or dispose of by gift or will, any part or whole of the immovable property of any kind left by the testator; and (c) that after the death of Smt. Ram Kaur all the properties, movable and immovable, and sums due to Sardar Sujan Singh or Smt. Ram Kaur or deposits at any place or with any bank or office shall be the sole property of Lokesh Datta Multani son of late Pt. Thakur Datta Multani who treats the testator and his wife just like his parents and whom they treat as their son and he has been taking care of them for the last more than 10 years.

Sardar Sujan Singh died at Indore in the Nursing Home of his nephew Prithipal Singh on 24.08.1963. Bhog and other ceremonies were performed at Delhi by Smt. Ram Kaur, Prithipal Singh and others.

Case of the plaintiff/respondent is that after the death of Sardar Sujan Singh, Smt. Ram Kaur at the instigation of some interested persons refused to admit the will, although the will was signed and attested by her. It led to his filing suit No. 92 of 1964 in the Court of Sub Judge, First Class, for a declaration that Smt. Ram Kaur has only a life interest in the property and the respondent is the ultimate owner of the properties left by Sardar Sujan Singh under his will dated 7.10.1960. That

there was compromise in the said suit and Smt. Ram Kaur admitted the respondent's claim and decree for declaration as prayed for in the suit was passed. His further case is that a public notice was got published in the Delhi Gazette of the Government of India dated 02.07.1964 wherein it was stated that Sardar Sujan Singh had left a will dated 7.12.1960 and under that will the plaintiff/respondent was the owner of the property No. 251 Block F, New Rajinder Nagar, New Delhi and further that he had been declared to be the sole owner of the said property by a decree dated 25.04.1964 passed by a Court of competent jurisdiction. That any one dealing with any person for the sale, mortgage or otherwise transfer of the said property in any way shall do so at his own risk and costs. He further alleged that on 23.12.1996 Smt. Ram Kaur by a registered gift deed gifted premises No. 251 Block F, New Rajinder Nagar, New Delhi to the appellant No. 1 Hazara Bradri which is a registered society and that led to filing of the suit on 10.07.1967. It was prayed that a declaration be given to the effect that the gift made by Smt. Ram Kaur in respect of house No. 251 Block F, New Rajinder Nagar, New Delhi in favour of appellant Nos. 1 and 3 is void and ineffective as against the plaintiff on the death of Smt. Ram Kaur.

Appellants contested the suit. It was denied that Sardar Sujan Singh had made any will, they pleaded that the will set up by the plaintiff was false and fabricated. They further denied that Sardar Sujan Singh and Smt. Ram Kaur ever treated the plaintiff as their son or that they had any affection for him. It was further pleaded that even if the will is proved to have been duly executed the restriction placed on the right of Smt. Ram Kaur in the matter of disposal of the property was not legal and binding. It was contended that Smt. Ram Kaur had inherited the property as the sole and absolute owner and there was no restriction on her right to dispose of the same. It was maintained by them that the gift was valid, legal and binding.

Smt. Ram Kaur, who was arrayed as defendant No. 4, in her separate written statement stated that Pandit Thakur Datta Multani was a friend of Sardar Sujan Singh and as such they were on visiting terms with each other. Pandit Thakur Datta Multani had appointed Sardar Sujan Singh as an executor of his will. She controverted the allegation that she and Sardar Sujan Singh treated the plaintiff as their son and he treated them like his parents. It was pleaded that if the will is proved to have been attested by her, her signatures must have been obtained by the plaintiff by fraudulent and deceitful means. It was further pleaded that the plaintiff had by fraudulent means got the bank accounts transferred in his name and that when she came to know of that fact, she got the name of the plaintiff removed from the account and she opened a fresh account in her own name. It was further stated that she was not aware of the earlier suit

filed by the plaintiff and the declaration obtained by him. According to her the plaintiff may have obtained the said declaration in the suit by fraudulent means. She denied to have signed any compromise deed in the said suit.

On these pleadings the trial Court inter alia framed issues regarding the due execution and attestation of the will; whether the restriction in the will that Smt. Ram Kaur did not have the right to sell, mortgage or dispose of by gift any part of the estate was void; as to whether in the earlier suit instituted by the plaintiff against Smt. Ram Kaur, she had admitted by way of compromise that the plaintiff was the owner of the property left by Sardar Sujan Singh and what is its effect on the present suit; and whether the gift made by Smt. Ram Kaur, defendant No. 4, in favour of appellant was void and illegal. During the pendency of the suit Smt. Ram Kaur died on 5.2.1978 and thereafter the plaintiff/respondent amended the plaint and besides declaration claimed possession of the house in dispute.

In order to prove the will respondent produced the two attesting witnesses, namely, Shri Baldev Raj Ajmani, PW 3 and Shri N.C. Sarkar, PW 7. The will purports to bear the thumb impression and signatures of Smt. Ram Kaur in Gurumukhi as an attesting witness. He examined Shri Mohan Lal Patney, who was the advocate of Smt. Ram Kaur in the earlier suit as PW 2. He also examined Shri H.L. Seth, a Sub-Officer in the National Grindlays Bank Ltd. as PW 1 where Sardar Sujan Singh had an account besides appearing himself as PW 9. He also examined Shri A.S. Kapur, PW 8, a handwriting expert who proved the signature of Sardar Sujan Singh on the will with his admitted signature from the Bank. He examined other witnesses also of which we may not take note of at this stage. Smt. Ram Kaur appeared as DW 1 as well as Shri M.K. Mehta, DW 3, handwriting expert.

Learned Single Judge after hearing the counsel for the parties by an elaborate judgment held that due execution of the will was doubtful. Believing the testimony of Shri Mehta, hand-writing expert produced by the appellants and after examining the disputed signatures of Sardar Sujan Singh and Smt. Ram Kaur himself came to the conclusion that it was doubtful as to whether the signatures appended on the will were that of Sardar Sujan Singh and Smt. Ram Kaur. It was held that it was doubtful that Smt. Ram Kaur was aware of the suit instituted by the plaintiff against her and of the decree passed in the suit. That it seems that respondent had obtained the decree by some dubious means. Evidence of Shri Kapur hand-writing expert produced by the respondent was disbelieved. Testimony of the two attesting witnesses was also disbelieved. Learned Single Judge did not elaborately discuss the testimony of these witnesses. Their testimony was discarded by observing that they did not know the respondent intimately and they knew him casually only. It was held that Smt. Ram Kaur had

not put her signature on the will or the compromise entered into between her and the respondent in the previous suit. For the aforesaid reasons, the learned Single Judge dismissed the suit leaving the parties to bear their own costs.

The Division Bench in appeal reversed the findings of the learned Single Judge and held that no fault could be found with the testimony of the two attesting witnesses who were trustworthy. That their testimony had been discarded by the learned Single Judge without recording any reasons whatsoever. The finding recorded by the learned Single Judge regarding due execution of the will or that Sardar Sujan Singh had not put his signature was also set aside. The testimony of Smt. Ram Kaur was also disbelieved. It was held that the will was duly executed by Sardar Sujan Singh who had treated the respondent like his son and that the respondent had been taking care of Sardar Sujan Singh and Smt. Ram Kaur during their old age. It was held that Sardar Sujan Singh and Pt. Thakur Datta Multani were very close friends and the latter had appointed Sardar Sujan Singh as the executor of his will. The suit filed by the plaintiff/respondent was accordingly decreed.

After hearing learned counsel appearing for the parties, going through the judgments of the Division Bench as well as that of the learned Single Judge and the evidence all over again we are in agreement with the view taken by the Division Bench. The Division Bench has rightly set aside the judgment of the learned Single Judge and in decreeing the suit filed by the plaintiff/respondent.

The testimony of Ajmani- PW 3, and Sarkar-PW 7, the two attesting witnesses is consistent, natural and truthful. Intensive cross-examination has failed to bring out any material contradiction in their testimony. Learned Single Judge did not deal with the testimony about the actual attestation of the Will on 7.12.1960 but has disbelieved the attestation on collateral grounds such as (a) as to why Ajmani \026 PW 3 and Sarkar \026 PW 7 were chosen as attesting witness; (b) it was doubtful whether the Sardar Sujan Singh who had sustained a fracture in his leg was in a position to go to the houses of Ajmani and Sarkar to call them; (c) since the plaintiff had been called by Sardar Sujan Singh on phone to come to the house in the evening of 7.12.1960 he would have as well asked the plaintiff to call Ajmani and Sarkar rather than going to their houses to call them himself; (d) signatures of Ram Kumar and Sardar Sujan Singh on one hand and those of attesting witnesses on the other are in different inks. These are hardly any grounds to discard the testimony of PW 3 and PW 7. Ajmani \026 PW 3 came into contact with Sardar Sujan Singh as they often used to meet at Ramkrishna Mission. Similarly, Sarkar - PW 7 being a Government servant was in touch with Sardar Sujan Singh. The testimony of these two witnesses cannot be disbelieved only on the ground that it was doubtful

that Sardar Sujan Singh because of the fracture in his leg could have gone to their houses to call them. The aforesaid finding, in our view, is unsustainable particularly when it has not been established as to during what period of the year 1960 Sardar Sujan Singh had suffered the fracture in his leg. Learned Single Judge merely estimated the fracture to be in the year 1960. The will was executed in December, 1960. In the absence of any evidence that in which month did Sardar Sujan Singh had suffered the fracture it is not possible for us to conclude that Sardar Sujan Singh was not in a position to go to the houses of these two witnesses to call them. Learned Single Judge took the view that signatures of Smt. Ram Kaur and those of Sardar Sujan Singh are in the same ink whereas the signatures of the other two attesting witnesses are in different ink. Will cannot be disbelieved only because the testator had used a different pen than the pen used by the attesting witnesses.

Learned Single Judge has discarded the will on the ground that the same was surrounded by suspicious circumstances. The Division Bench after an elaborate discussion has discarded all the suspicious circumstances. The Division Bench came to the conclusion that the will was natural and was executed by Sardar Sujan Singh out of love and affection for respondent whom he treated like his son. It was further held that he did not deprive his wife of the property. He left the property to his wife for her life time without any power to alienate the same in any manner and after her death the property was to go to the respondent as absolute owner. Smt. Ram Kaur had attested the will. It was found that Pt. Thakur Datta Multani father of the respondent was a very close friend of Sardar Sujan Singh which was evident from the fact that he had appointed him as the executant of his will. That Sardar Sujan Singh had executed the will out of his own volition in a healthy state of mind and had appended his signature on each page of the will. Simply because he had signed some of the pages twice was not a good ground to hold that the will was suspicious.

We agree with the view taken by the Division Bench and need not elaborate it again. Learned counsel for the appellants could not persuade us to take a view other than the view taken by the Division Bench. The finding recorded by the Division Bench that the will was not surrounded by suspicious circumstances is sustainable. Moreover, this is a finding of fact which does not call for any interference.

We are also inclined to agree with the view taken by the Division Bench that Sardar Sujan Singh had executed the will in favour of the respondent as he was the son of Pt. Thakur Datta Multani a close friend of his and that he had been treating the respondent as his son and the respondent had also looked after Sardar Sujan Singh and Smt. Ram Kaur in their old age and illness. Smt. Ram Kaur

had also attested the will. She had also entered into a compromise with the respondent in the earlier suit and admitted the due execution of the will in favour of the respondent. It seems that because of the change of heart she denied the execution of the will and the compromise arrived at by her in the earlier suit and took the stand that her signature/thumb impression on the will may have taken by fraudulent means. For the same reason she denied her entering into a compromise in the earlier suit.

For the reasons stated above, we do not find any merit in this appeal and dismiss the same with no orders as to costs.

JUDIS