

PETITIONER:
SMT. DEOKALI

Vs.

RESPONDENT:
NAND KISHORE & ORS.

DATE OF JUDGMENT: 24/04/1996

BENCH:
SEN, S.C. (J)
BENCH:
SEN, S.C. (J)
SINGH N.P. (J)

CITATION:
JT 1996 (5) 243 1996 SCALE (3)769

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

Sen, J.

The validity of a will executed by one Shivnarayan is under challenge in this case. Shivnarayan's wife had predeceased him. He had two daughters Ramkali and Deokali. Ramkali had six daughters and three sons-Nand Kishore, Santosh and Prakash. Santosh and Prakash were minors at the time of execution of the will. By the will Shivnarayan gave all his properties to the three sons of his elder daughter Ramkali. The will was executed on 2.5.1972. Shortly thereafter, sometime in May, 1972, Shivnarayan was shot dead. Banwari Lal, the husband of Deokali and his brother Rudra were charged with murder. Banwari Lal was acquitted by the court but his brother Rudra was, convicted and sentenced to rigorous imprisonment for life by the Sessions Court. It appears from the facts recorded by the court of Additional District Judge and also the High Court that Ramkali after her marriage started living with her father Shivnarayan along with her husband Balaprasad. All her children were born in the house of Shivnarayan. Shivnarayan had also made arrangements for getting one son and one daughter of Ramkali married. Ramkali and her husband used to look after Shivnarayan in his old age.

Deokali, the younger daughter after her marriage used to live with her husband Banwari Lal in the husband's house. Banwari Lal and Deokali quarrelled with Shivnarayan at the time of the marriage of Ramkali's daughter and demanded half share of the property of Shivnarayan. The people of the village assembled but Shivnarayan refused to give any share of his property to them. He said that he had kept Ramkali in his house and that Ramkali and her children had looked after him. He was not satisfied with the conduct of Deokali and her husband and he will not give any share of his properties to them.

Be that as it may. Shivnarayan was murdered shortly after the execution of the will. There were disputes about

the properties left behind by Shivnarayan.

In the will which was produced in the court. Shivnarayan had stated.

After marrying my elder daughter Ramkali immediately in the same year (about 25 years ago) kept her with me along with her husband my son-in-law to serve me. After this I have married my younger daughter in a prosperous (well-to-do) house.

The elder daughter Ramkali has got 3 sons and 5 daughters. The elder son whose name is Nand Kishore, after getting him educated got married by me. The younger son Santosh Kumar and the third son who is about 3 months old and who has not been given any name as yet both of them are minors. I am very much happy and glad with all of them i.e. by the Khushamad (Service) of the daughter and son-in-law and NATI (Grandsons), I have believed that in taken of their service I am writing this will with full senses and in good health, in the presence of the Panches, whose signatures are given belows in respect of my entire moveable and immovable property which includes houses and land in village Manwara and Pehra Haar whatever is there including all rights thereof in favour of all the three Natees (Grandsons), who are the sons of elder daughter Ramkali. If I will live alive for some more days, I myself will get Mutation recorded in the Govt. If I die, then after my death they will be owners of my entire property like me. All the 3 brothers will get their respective names mutated in the land plot numbers. In the same way will get their names recorded in the houses and will take their possession, and the two brothers who are still minors, till they do not attain majority, their mother, Ramkali shall remain SARPRAST (Guardian) of their property (Share).

The younger daughter Deokali is prosperous in her house. Her husband and her father-in-law are persons having sufficient money and they earn, they have no difficulty and the elder daughter Ramkali has no other source of livelihood except me. From earlier time since when I had decided that will give my property to Ramkali only. So I am making owners the three sons of Ramkali of my entire property in my full senses and sound health and do hereby execute this will in the

presence of the Panches, so that in case of my death if any dispute by any one claiming himself my heir may arise in respect of my property then the Court should not take any cognizance of the same and the 3 sons of Ramkali may continue to enjoy the fruits of the property belonging to me."

Sometime in 1977 Deokali filed a suit in the Court of Civil Judge, First Class, Chattarpur, for declaration that the will in question was invalid and not properly executed. She prayed for declaration of cancellation of the will. The trial court, however, held that the will was genuine and dismissed the suit. The first appeal being Civil Appeal No.23A of 1982 preferred by Deokali against the judgment of the trial court was also dismissed by the Additional District Judge, Chattarpur.

In the second appeal before the High Court, it was contended that there were at least six suspicious circumstances because of which the genuineness of the alleged will should have been disbelieved. The six suspicious circumstances were:

- (1) The will was written in two pages. The first page did not bear any signature of Shivnarayan nor of any one of the witnesses.
- (2) The first page of the will was written on a plain paper but the second page was written on a stamped paper.
- (3) The writer of the will did not come forward to give evidence.
- (4) The will alleged to have been executed by Shivnarayan on 2.5.1972 was produced for the first time in 1975.
- (5) The will was allegedly proved on evidence of witnesses who were close relations of the respondents.
- (6) Murder of Shivnarayan by the relations of the respondents only some days after the execution of the will was very suspicious.

Both the trial court and the first appeal court found that the signatures of Shivnarayan and the witnesses were genuine. The signatures were on the second page only. All the three courts took the view that this was not an unusual practice. So far as the will having been written on two pages, one stamped and the other unstamped, the courts noted that the witnesses were examined on this point. One of the witnesses Baijinath had stated that when the will was being written it could not be completed on the first page, therefore a second page which was not a stamped paper was used. Both the trial court and the first appeal court held that there was nothing unusual about this practice. In the second appeal this view was not disturbed. The court also took note of the fact that the witnesses had signed the will and some of the persons in whose presence the will was written had given testimony. Having regard to this fact the failure of the writer to justify the will did not make any difference. It has also been denied that the will was produced for the first time in 1975. From paragraph 4 of the written statement it appears that the existence of the will was known to Deokali and her husband Banwari Lal in 1972 itself. It was also held that making only the relatives as witnesses to the will is also not an unnatural practice. Every person wants to make arrangement for disposition of his property with the knowledge of his relatives.

The High Court affirmed the judgment and decree passed by the Additional District Judge Chattarpur dated 24.12.1982 after considering all the arguments advanced by the

appellants. The facts of the case and the evidence produced were gone into at great length by the Additional District Judge. On a review of the findings of fact and evidence brought on record, he affirmed the finding of the trial court. The High Court also examined the facts but declined to interfere with the concurrent finding of the courts below. What was alleged to be suspicious circumstances were also examined by the High Court. It does not appear that the High Court has committed any error in law in coming to its decision. The case was decided basically on facts. We see no reason to interfere with the judgment of the High Court. The appeal is dismissed. There will be no order as to costs.

JUDIS