PETITIONER:
VRINDAVANIBAI SAMBHAJI MANE

Vs.

RESPONDENT:
RAMCHANDRA VITHAL GANESHKAR & ORS.

DATE OF JUDGMENT10/07/1995

BENCH:
MANOHAR SUJATA V. (J)
BENCH:
MANOHAR SUJATA V. (J)
AGRAWAL, S.C. (J)

CITATION:
1995 AIR 2086 1995 SCC (5) 215
JT 1995 (7) 363 1995 SCALE (4)271

ACT:

HEADNOTE:

JUDGMENT:
THE 10TH DAY OF JULY, 1995
Present:
Hon'ble Mr.Justice S.C.Agrawal
Hon'ble Mrs.Justice Sujata V.Manohar
Mr. M.S. Ganesh, Adv. for the appellant
Mr.S.B.Wad, Sr. Adv. Mrs.S.Usha Reddy and Mrs. Jayasree Wad, Advs. with him for the Respondents.

J U D G M E N T

The following Judgment of the Court was delivered:

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 2409 OF 1978

Vrindavanibai Sambhaji Mane ...Appellant
V.
Ramchandra Vithal Ganeshkar ...Respondents
and Ors.

J U D G M E N T

Mrs. Sujata V. Manohar. J.

The appellant Vrindavanibai was the original defendant no.1 in the suit filed by Vithalrao Ganpatrao Ganeshkar in the Court of the Civil Judge, Junior Division, at Pune. The present respondents 1 to 5 are the heirs and legal representatives of the original plaintiff Vithalrao Ganpatrao Ganeshkar. The suit was filed for a declaration that the plaintiff was the owner of the suit property which consists of a house bearing no.674, Narayan Peth at Pune.

The suit property originally belonged to one Rangubai Maruti Ganeshkar. She died on 28.2.1947 and her property was inherited by her daughter Babubai Sonba Pawar. Babubai was widowed in childhood. She had no children. She was in possession of this house till her death. She resided in one of the rooms in this house. The other rooms were rented out. In her life time she was managing this property, recovering rent and maintaining herself from this income. Babubai's mother had a sister Gangubai. Gangubai had two daughters -

Vrindavanibai and Indubai who are the appellant and respondent no.2 before us. Babubai had good relations with the appellant Vrindavanibai and her husband. The appellant often visited Babubai and generally looked after her. Babubai died on 27.11.1963 on account of a heart attack. She was 50 years of age at the time of her death. Prior to her death, she made a will dated 25.7.1963 under which she has given all her properties to the appellant. Accordingly, the appellant claims to be the owner of the property which is the subject matter of dispute in the present proceedings.

The original plaintiff Vithalrao Ganpatrao Ganeshkar was Rangubai's husband's brother's son. From the evidence which is on record, it is apparent that the original plaintiff or his family had not kept in touch with Babubai during her life time. His son, who gave evidence at the trial, was not able to say anything about how Babubai maintained herself during her life. Under the Hindu Succession Act by which the parties are governed, the original plaintiff would be the heir of Babubai had she died intestate.

After the death of Babubai the appellant and her husband were in possession and management of the suit property. The plaintiff Vithalrao tried to take possession of the room which had been occupied by Babubai, as well as her moveables. As a result of which, in December 1964 a police complaint was lodged and the room was sealed. In March 1965 Vithalrao applied to get his name entered in respect of this property in the City Survey Records. This was opposed by the appellant and her husband. Ultimately, the names of Vithalrao as well as the appellant and her sister - the 6th respondent, were entered in the City Survey Records.

In February 1967 the present suit was filed by Vithalrao for a declaration that he was the owner of the said property and for its possession. In the written statement which is filed by the appellant, she claimed title to the suit property by virtue of the will left by Babubai in her favour. The written statement was filed by her sometime in March 1968. Immediately, thereafter, she produced the original will in court. The plaintiff did not raise any plea questioning either the genuineness or the validity of the Will.

The Trial Court framed an issue as to whether the appellant Vrindavanibai had become the owner of the property of Babubai by virtue of the will dated 25.7.63 as alleged. At the trial, the appellant led the evidence of two attesting witnesses of the Will who deposed that they were present at the time of execution of the Will at the invitation of Babubai. They had seen Babubai put her signature on the Will in their presence and each of them had put his signature on the Will as an attesting witness in the presence of Babubai as well as in the presence of each other. The appellant also examined herself. She deposed that in the Diwali of the year 1963 Babubai gave her the Will. That is how she came to know that Babubai had executed a Will in her favour on 25.7.1963. Neither she nor her husband were present at the time of execution of the Will and did not know anything about the Will until it was given to her in the Diwali of 1963. She did not know how the Will was got prepared by Babubai. As against this evidence the plaintiff did not examine himself. His son Maruti, however, gave evidence on behalf of the plaintiff. He denied the Will and claimed the property as an heir of Babubai.

The Trial Court held that the Will was not proved as it was not entirely satisfied about the testimony of attesting

witnesses. It decreed the suit. In appeal, however, the District Court at Pune, after analysing the entire evidence, has, by a detailed reasoning come to the conclusion that the Will has been properly proved by the appellant. The Appellant Court accepted the testimony of the two attesting witnesses as properly proving the Will. The Court further observed that without any basis, the Trial Court ought not to have rejected the testimony of the two attesting witnesses who were not shaken in cross-examination though there might be minor discrepencies. Both these witnesses were known to the testatrix. They have deposed that they were called by her on the 25th of July, 1963 to her residence for the purpose of attesting her Will. The Appellate Court came to the conclusion that there was nothing suspicious about the circumstances relating to the execution of the Will or the testimony given by the two attesting witnesses. The Appellate Court also noted that the plaintiff did not take any plea challenging the genuineness of Babubai's signature on the Will nor was it alleged that the Will was a forged document prepared after the death of Babubai by the appellant to obtain her property. There was also no plea of any undue influence being exercised by the appellant over Babubai to get a Will executed in her favour.

In order to satisfy its conscience the Appellate Court has also looked at the undisputed signatures of Babubai which were available on Exhibits 54 to 56 which are rent receipts signed by Babubai. After comparing these signatures with the signature on the Will, the court observed that the signature on the Will is genuine. As there was no challenge to the genuineness of the signature of Babubai on the Will, neither party led any expert evidence on this aspect.

The only "suspicious circumstance" relied upon by the plaintiff was, that the Will was not produced by the appellant immediately after the death of Babubai, or at the earliest possible opportunity. It was not produced till she filed her written statement in March 1968. There was a police complaint filed in December 1964 when the plaintiff had tried to take possession of Babubai's room. On this occasion the appellant or her husband did not make any statement relating to the existence of a Will in their favour. In the proceedings before the City Survey Officer, a statement was given by the husband of the appellant. He also did not make any reference to the Will of Babubai in favour of the appellant.

The Appellate Court has held that on both these occasions the dispute was only regarding the possession of the property. It was not an occasion on which the appellant was required to establish her ownership or title over the suit property. Hence, she may have decided not to disclose the existence of the Will in those proceedings, and might have bided her time.

After considering the entire evidence before it, the Appellate Court held that the appellant had proved the Will and consequently her title to the suit property. The appeal was, therefore, allowed.

In Second Appeal, the learned Single Judge of the High Court has, however, re-assessed the entire evidence and has come to the conclusion that the appellant has not dispelled suspicious circumstances surrounding the execution of the Will. It is difficult to appreciate this kind of re-assessment of evidence in Second Appeal. Ordinarily, the decision on facts arrived at by the first Appellat Court is not disturbed in Second Appeal. The Appellate Court had, for cogent reasons, accepted the testimony of the two attesting witnessess. It is difficult to see why this testimony was

not accepted in Second Appeal. Moreover, the Appellate Court had examined the question of non-disclosure of the Will on two earlier occasions and had found that there was nothing suspicious in that regard. The Will had been produced in court immediately after the appellant had relied upon it in her written statement. Learned Single Judge of the High Court seems to consider this as a suspicious circumstance forgetting that there was no specific challenge to either the validity or proper execution of the Will.

It is also apparent that there is nothing unnatural about the contents of the Will. The evidence before the court makes it clear that while the plaintiff and his family had not cared to enquire after Babubai and had not cared to look after her during her life time, the appellant and her husband had throughout looked after Babubai and maintained good relations with her. If, therefore, she made a Will leaving her properties to the appellant, this was only natural. The 6th respondent who is the sister of the appellant and who was also on good terms with Babubai has not challenged the Will.

As far back as in 1894 the Privy Council in the case of Choteynarain Singh v. Mussamat Ratan Koer (22 Indian Appeals 12) observed that in the case of execution of a Will, an improbability must be clear and cogent. It must approach very nearly to, if it does not altogether constitute, an impossibility. This was reiterated by the Calcutta High Court in the case of Kristo Gopal Nath v. Baidya Nath & Ors. (AIR 1939 Cal. 87). It said that when a court is dealing with a testamentary case where there is a large and consistent body of testimony evidencing the signing and attestation of the Will, but where it is suggested that there are circumstances which raise a suspicion and make it impossible that the Will could have been executed, the correct line of approach is to see that the improbability in order to prevail against such evidence must be clear and cogent and must approach very nearly to, if it does not altogether constitute, an impossibility. There is no such improbability about the Will in the present case.

There is also a large body of case law about what are suspicious circumstances surrounding the execution of a Will which require the propounder to explain them to the satisfaction of the court before the Will can be accepted as genuine. A Will has to be proved like any other document except for the fact that it has to be proved after the death of the testator. Hence, the person executing the document is not there to give testimony. The propounder, in the absence of any suspicious circumstances surrounding the execution of the Will, is required to prove the testamentary capacity and the signature of the testator. Some of the suspicious circumstances of which the court has taken note are: (1) The propounder taking a prominent part in the execution of a Will which confers substantial benefits on him; (2) Shaky signature; (3) A feeble mind which is likely to be influenced; (4) Unfair and unjust disposal of property. (See in this connection: H. Venkatachala Iyengar v. B.N. Thimmajamma & Ors. (1959 Supp. (1) SCR 426), Indu Bala Bose & Ors. v. Manindra Chandra Bose & Anr. (1982 (1) SCR 1188 at p. 1192) and Guro(Smt.) v. Atma Singh & Ors. (1992 (2) SCC 507 at p. 511). Suffice it to say that no such circumstances are present here.

Learned Advocate for respondents 1 to 5 has submitted that Babubai was only fifty years of age when she died. She was enjoying normal health. There was no reason for her to make the Will. But in the Will itself Babubai has mentioned that she is suffering from physical weakness although she is

not a very old person and hence she is making the Will. In any case, motive for making the Will is not really relevant. The fact that testatrix made a Will at the age of fifty cannot be considered as a suspicious circumstance reflecting on the genuineness of the Will.

In the premises, the High Court was not right in re-appraising evidence in Second Appeal and coming to the conclusion that the Will was not genuine or was not proved. The appeal is, therefore, allowed. The judgment and order of the High Court is set aside and the judgment and order of the first Appellate Court is restored. There will, however, be no order as to costs.