

A SMT. SHAKUNTALA BAI & ORS.

v.

MR. MAHAVEER PRASAD

(Civil Appeal Nos.1630-31 of 2010)

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02 JULY, 2015

[R. K. AGRAWAL AND AMITAVA ROY, JJ.]

C *Will – Validity of – Application u/s. 372 of Succession Act, 1925 by adopted son of testator on the strength of Will dated 15.11.1978 – Validity of the Will challenged – Trial Court rejected the application holding the Will to be invalid – Single as well as Division Bench of High Court, reversed the order of trial court, and directed issuance of Succession*
D *Certificate – On appeal, held: Two witnesses have satisfactorily proved the execution of the Will and the attestation thereof by two witnesses – Signature of the testator has been endorsed by two handwriting experts which was corroborated by forensic report – Widow and daughter of the*
E *Testator supported the case of the applicant – Thus there is no vitiating or suspicious circumstance invalidating the bequest – Succession Act, 1925 – s. 372.*

Dismissing the appeals, the Court

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HELD: 1. Undisputedly, the Respondent No. 1 had been adopted by the testator in the year 1962 and had become a part of the family thereby. As the Will dated 15.11.1978, Exh. 2 would reveal, it was preceded by two
G **Wills dated 01.11.1962 and 23.12.1974 which witnessed different patterns of disposition of the properties mentioned therein. The Will dated 15.11.1978, as the recital thereof would reveal, superseded the earlier Wills dated 01.11.1962 and 23.12.1974. On a perusal of the**
H **evidence of AW 3 and AW 4 it is apparent that these two**

witnesses have been able to satisfactorily prove the execution of the Will dated 15.11.1978 and the attestation thereof by two witnesses, as required in law. The signature of the testator on these documents has been endorsed by two handwriting experts. The report of the Forensic Science Laboratory also corroborates this finding. The recitals of the Will, Exh.2, also provide sufficient justification for the bequest in favour of Respondent No. 1. The fact that wife and daughter of the testator had, at all relevant time, supported Respondent No. 1 in his initiatives to obtain the succession certificate is also a formidable factor in his favour as well as in endorsement of the genuineness of the Will, 15.11.1978. Though, the Will dated 23.12.1974 had been registered, no steps had been taken by the non-applicants to obtain the probate thereof. [Paras 13 and 14] [274-E-G; 275-E-H; 276-A]

2. In the factual background, the dispensation made by the testator in favour of Respondent No. 1 cannot be repudiated to be in defiance of logic or unfair, vis-à-vis the other members of the family. There is no vitiating or suspicious circumstance invalidating the bequest. [Para 14] [276-D]

CIVILAPPELLATE JURISDICTION : Civil Appeal Nos. 1630-1631 of 2010

From the Judgment and Order dated 25.09.2003 in S. B. Civil Misc. Appeal No. 414 of 1997 of the High Court of Rajasthan at Jodhpur.

Madhurima Tatia for the Appellants.

Yashank Adhyeru, Aruna Gupta, Sumita Hazarika for the Respondent.

A The Judgment of the Court was delivered by

AMITAVA ROY, J. 1. The present appeals, mount an assailment against the judgment and order dated 25.9.2003 rendered by a Single Bench of the High Court of Judicature for Rajasthan, allowing SB Civil Misc. Appeal No. 414/1997, preferred before it, by the Respondent No. 1, Mahaveer Prasad against the verdict of the learned District Judge, Udaipur dated 24.5.1997, in Original Civil Case No. 32/1992, instituted by him under Section 372 of the Indian Succession Act 1925 for issuance of succession certificate in his favour, as well as the judgment and order dated 23.08.2007 passed in Division Bench Civil Special Appeal No.187/2003 rendered by a Division Bench of the High Court sustaining the decision dated 25.09.2003 above referred to. Aggrieved on both the counts, the non-applicants in the succession certificate proceedings are in appeal. We have heard the learned counsel for the parties.

2. The facts in bare minimum as offered by the rival pleadings, are that the predecessor-in-interest of the Respondent No.1, Velchand had two sons, Amba Lal and Kanhaiya Lal. Respondent No. 1, Mahaveer Prasad was the son of Amba Lal who died in 1956. The other siblings of Respondent No. 1 were Shanti Lal, Chhabi Lal and Shakuntala Bai, the Appellant No. 1 herein. Chhabi Lal died leaving behind Shakuntala Jain, the Appellant No. 2, his widow and daughter Vishakha Jain, Appellant No. 3. The Respondent No. 1 was taken in adoption by Kanhaiya Lal, who had no son, in the year 1962, and a registered deed of adoption was executed on 30.10.1962. Kanhaiya Lal died on 06.01.1992 leaving besides his adopted son, Respondent No. 1, Mahaveer Prasad, his wife Sohanbai and his daughter Kantabai. Sohanbai died on 01.03.2001 and Kantabai on 25.11.2007 leaving behind two daughters, named Vijay Lakshmi and

Kanchan Devi, Appellant No. 4 and 5 respectively. In due course, the name of Kantabai who had died during the pendency of the instant appeals, was deleted from the array of the parties. A

3. The respondent No. 1, Mahaveer Prasad, filed an application before the learned Trial Court under Section 372 of the Indian Succession Act 1925 (for short hereinafter referred to as 'the Act') for issuance of succession certificate, to enable him to collect the rent from the tenants of the ground floor and basement thereunder of the property of Kanhaiya Lal (who was by then dead) situated at Plot No. 2, Babu Bazar, Udaipur and the deposits in the bank account of the deceased. This was preceded by a Will dated 15.11.1978, which the Respondent No. 1 claimed to have been executed by Kanhaiya Lal, bequeathing property mentioned therein to him. As the records would reveal, this Will was in supersession of earlier Wills dated 01.11.1962 and 23.12.1974. The Respondent No. 1 founded his application for succession of certificate on the Will dated 15.11.1978, which according to him was the last in the line, validly executed by the testator Kanhaiya Lal. While non-applicant No. 1 and 2, Sohanbai (wife of Kanhaiya Lal) and Kantabai (daughter of Kanhaiya Lal) in their written-statement supported the application of the Respondent No.1 and pleaded that the succession certificate may be issued him as prayed for, the non-applicant No. 3 and 4 Chhabi Lal and Shakuntla alleged that the Will dated 15.11.1978 was a fictitious one and asserted that the one dated 23.12.1974, was the last valid Will of Kanhaiya Lal. Non-applicant No. 5 and 6 Vijay Lakshmi and Kanchan Devi, both daughters of Kantabai, did also avowed that the Will dated 15.11.1978 was a fake document and the one dated 23.12.1974 was the last valid Will for the testator above named. B
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4. On the basis of the pleadings of the parties, the learned Trial Court framed the following issues: H

A "1. If deceased Shri Kanhaiya Lal had adopted applicant Shri Mahaveer Prasad in a legal manner and on 15.11.1978, he had voluntarily executed a legal WILL in favour of the applicant?

B 2. If on 23.12.1974, deceased Shri Kanhaiya Lal had executed his Will and deposited with the Registrar, Udaipur and this Will is last and legal Will of late Shri Kanhaiya Lal ?

C 3. If applicant Shri Mahaveer Prasad or out of objectors, who are entitled to get succession certificate? "

D 4.1 Admittedly by order dated 09.02.2006, the learned Trial Court deleted the issue No. 2 quoted hereinabove, thus leaving the issues No. 1 and 3, originally framed, to be decided in the proceedings before it.

E 5. Both sides adduced evidence, both oral and documentary. Amongst others, the Will dated 15.11.1978 was proved as Exh. 2 and the Respondent No. 1 examined himself in respect of the said document and also Mohan Lal AW 3 and Mangi Lal AW 4, more particularly, to prove the attestation of the said document. He also examined Mr. P S Mamik, a handwriting expert. The contesting non-applicants also inter-alia examined one Shri Achyut, DW 1, a handwriting expert, apart from other witnesses.

F 6. The learned Trial Court, on a consideration of the pleadings of the parties and the evidence on record, held that the Will dated 15.11.1978 was not a valid one and had been deceitfully obtained by converting two blank papers, on which the signatures of the testator Kanhaiya Lal had been procured by fraud. It instead returned a finding that the Will dated 23.12.1974 was last the valid instrument of bequest, though as adverted to hereinabove the issue No. 2, pertaining thereto, had been deleted.

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6.1 The learned Trial Court in concluding as above, though did notice the testimony of AW 3 Mohan Lal, that he had signed the Will dated 15.11.1978 and that his signatures had been obtained in such capacity by the testator himself and further, that he (testator) had also signed on every page of the document in his presence, disbelieved this witness, amongst others on the ground, that he had been at the relevant point of time, working as a salesman in the shop of the testator and that he had failed to correctly recollect many facts pertaining to the strained relationship between the legatee, the Respondent No. 1, Mahaveer Prasad and the testator. The learned Trial Court rejected as well the testimony of AW 4 Mangi Lal, to the effect that his uncle Kanhaiya Lal Kunawat was the other attesting witness, who had signed the disputed Will, Exh. 2, in proof of attestation of the execution thereof by the testator.

7. According to the learned Trial Court, this witness was not reliable, as the son of Kanhaiya Lal Kunawat though alive, was not produced as a witness and he (Mangi Lal) too was the employee of testator. The identification of the signatures of the testator Kanhaiya Lal Kunawat on the Will, Exh. 2, by Mangi Lal was also discarded, on the ground that he had faltered to correctly recall the year of execution of the document. The learned Trial Court was of the view, that as at the relevant time of the family members were living together with the Kanhaiya Lal, and shared a cordial relationship, there was no justification for the disputed Will dated 15.11.1978, by superseding the earlier bequest made vide the Will dated 23.12.1974.

8. Shri P. S. Mamik, the handwriting expert, examined by the Respondent No. 1 on an examination of the Will, Exh. 2 and the disputed signatures thereon, had opined that those were in fact of the deceased Kanhaiya Lal. This witness also proved his report to this effect, Exh. 3. The learned Trial Court

A instead relied on the opinion of Shri Achyut, NAW 1, the
handwriting expert examined by the contesting non applicants
though this witness too had opined that the signatures
appearing on the disputed Will, Exh. 2 were of the testator
Kanhaiya Lal, but had expressed his view that having regard
B to the contents of the document and the spacing of the lines, it
appeared to have been prepared later.

9. Being aggrieved by this determination, the
Respondent No. 1 preferred appeal before the High Court and
C as referred to hereinabove, SB Civil Misc. Appeal No. 414/
1997 preferred by the Respondent No. 1 was allowed and DB
Civil Special Appeal No. 87/2003 instituted by the appellants
was dismissed. The High Court reversed the decision of the
Trial Court and allowed the appeal filed by the Respondent
D No. 1 herein and directed issuance of the succession
certificate in his favour.

10. On an elaborate assessment of the pleadings and
the evidence adduced, the High Court at the threshold, noticed
E the error apparent on the face of the records committed by the
learned Trial Court in examining the rival contentions in the
context of the Will dated 23.12.1974, which was the subject
matter of issue No. 2 that stood deleted. It recorded as well,
that on the consensus of the parties, the disputed Will, Exh. 2
F had been referred to the Forensic Science Laboratory and
that the report furnished did prove that the signatures appearing
thereon were of the testator. It discarded the testimony of NAW
1 Shri Achyut Narayan that though the two sheets of paper
comprising the Will, Exh. 2 did contain the signatures of the
G testator, those had been obtained on blank papers and were
later on converted into the instrument of dispensation. The
High Court held amongst others that the evidence of Mahaveer
Prasad and his witnesses Mohan Lal (AW 3) and Mangi Lal
H (AW 4) proved the execution and attestation of the will Exh. 2.

The High Court did also take notice of the fact that the Respondent No. 1, had been taken in adoption by the testator, a fact not disputed and that in absence of any Will, he (Respondent No. 1) would have even otherwise, succeeded to the property of Kanhaiya Lal in that capacity. It viewed the disputed Will to be an instrument, whereby the status of the Respondent No. 1 as the son of the family had been restored after initial misgivings. It also dismissed the grounds on which the testimony of attesting witnesses Mohan Lal and that of Mangi Lal qua attestation by his uncle Kanhaiya Lal Kunawat had been rejected by the learned Trial Court. The fact that the non-applicants, who claimed to be the beneficiaries of the Will dated 23.12.1974 had not at any point of time sought for a probate thereof was noticed as well. That the application for succession certificate made by the Respondent No. 1, was supported by the wife and the daughter of the testator, also weighed with the High Court in his (Respondent No. 1) favour.

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11. The learned counsel for the appellants has strenuously argued that neither the execution of the Will, Exh. 2, nor the attestation thereof has been proved and thus the High Court was clearly in error in reversing the determination made by the learned Trial Court. According to her, the last valid Will of the testator Kanhaiya Lal was dated 23.12.1974, a registered document. She urged that the disputed Will being an instrument, whereby patently unfair and illogical dispensations have been made, is also otherwise rejectable, being surrounded by several suspicious circumstances, which the propounder had failed to dispel. In her endeavour to buttress the above contentions, the learned counsel for the appellants, had drawn our attention to the contents of the Wills dated 23.12.1974 and 15.11.1978.

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12. As against this, the learned counsel for the Respondent No. 1 urged that the Will, Exh. 2 had been duly

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A executed by the testator Kanhaiya Lal, as required in law and
in the face of the evidence on record, more particularly, of
Mohan Lal (AW 3) and Mangi Lal (AW 4), the attestation thereof
also stands established. Apart from the fact that Respondent
No. 1, had been adopted by the testator and that he was thus
B the only son of the family for all intents and purposes, the
contents of the Will dated 15.11.1978, did clearly explain the
bequest in his favour, he maintained. The learned counsel
asserted that the fact that the wife and daughter of Kanhaiya
Lal did support the application of the Respondent No. 1 for the
C succession certificate authenticated as well, the validity of the
disputed Will, Exh. 2. He pointed out that the succession
certificate was for the limited purpose of collecting the rent
paid by the tenants in respect of the premises, mentioned
therein and lying in deposit with the bank and thus in any view
D of the matter, the instant appeal lacks in merit and is liable to
be dismissed.

13. We have traversed the pleadings, the evidence on
record to the extent necessary and have also carefully analysed
E the competing arguments advanced. Undisputedly, the
Respondent No. 1 had been adopted by Kanhaiya Lal in the
year 1962 and had become a part of the family thereby. As
the Will dated 15.11.1978, Exh. 2 would reveal, it was preceded
F by two Wills dated 01.11.1962 and 23.12.1974 which
witnessed different patterns of disposition of the properties
mentioned therein. The Will dated 15.11.1978, as the recital
thereof, would reveal superseded the earlier Wills dated
01.11.1962 and 23.12.1974. The contents of this Will, Exh. 2
G discloses that the testator being earlier annoyed with
Respondent No. 1 and as advised by others, had sought to
disinherit him and with that state of mind had executed the Will
dated 23.12.1974. However, following deeper reflections and
self introspections generally as well as review in the spiritual
H perspectives, he decided to cancel the Will dated 23.12.1974

and instead execute the one dated 15.11.1978. Thereby, the property referred to therein was bequeathed to Respondent No. 1, who was also entrusted with the responsibility of looking after his (testator) wife Sohanbai and daughter Kantabai during their lifetime. The wife and daughter of the testator, as named above were also given full rights to live in the house named 'Jain Rishabh Bhawan' which stood otherwise bequeathed by the instrument, in favour of Respondent No. 1 Mahaveer Prasad. The Will mentioned as well, that the testator had written and verified the document in presence of and under the signatures of two witnesses, namely, Mohan Lal Jain and Kanhaiya Lal after considerable thought and voluntarily without any pressure. These documents, also contained the signatures of Shri Mohan Lal Jain and Shri Kanhaiya Lal, as witnesses who had endorsed the signatures of the testator thereon as certified by them.

14. On a perusal of the evidence of AW 3, Mohan Lal and AW 4, Mangi Lal, it is apparent that these two witnesses have been able to satisfactorily prove the execution of the Will dated 15.11.1978 and the attestation thereof by two witnesses, as required in law. As adverted to herein above, the signature of the testator Kanhaiya Lal, on these documents has been endorsed by both the handwriting experts. The report of the Forensic Science Laboratory also corroborates this finding. The view expressed by Shri Achyut Narayan, NAW 1 that though the signatures are genuine, those had been obtained on blank papers, which later on were converted into the Will, in the face of the overwhelming testimony of AW 3, Mohan Lal and AW 4, Mangi Lal, had been rightly rejected by the High Court. The recitals of the Will, Exh. 2, also provide sufficient justification for the bequest in favour of Respondent No. 1, Mahaveer Prasad. The fact that wife and daughter of the testator had, at all relevant time, supported the Respondent No. 1 in his initiatives to obtain the succession certificate is also a

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- A formidable factor in his favour as well as in endorsement of the genuineness of the Will, 15.11.1978. Noticeably though, the Will dated 23.12.1974 had been registered, no steps had been taken by the non-applicants to obtain the probate thereof. It is not unlikely, that the testator, out of, some disappointment and reservations qua the adopted son, Respondent No. 1 had in the rush of moment and as advised by the persons interested, as recited in the Will dated 15.11.1978, did momentarily decide to disinherit the only son of the family. However, on an equanimous re-consideration and following indepth and dispassionate cogitation, he eventually decided again to bequeath all his properties to him. The approval of the mother and the sister to this bequest is a strong indicator to this effect. We are thus of the view, that in the above factual background, the dispensation made by the testator in favour of the Respondent No. 1 cannot be repudiated to be in defiance of logic or unfair vis-à-vis the other members of the family. We do not find as well, any vitiating or suspicious circumstance invalidating the bequest.
- E 15. The upshot of the above narration is that, the conclusions recorded by the High Court are plausible being based on the materials on record and thus do not warrant any interference in the appeals. On an overall consideration of the pleadings and the evidence adduced, the findings of the learned Trial Court have been rightly reversed. These appeals thus fail and are dismissed.

16. No cost.