

Prakash Soni vs Deepak Kumar . on 15 September, 2017

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6388 OF 2009

Dr. Prakash Soni

..Appellant

Versus

Deepak Kumar and another

..Respondents

JUDGMENT

MOHAN M. SHANTANAGOUDAR

1. This appeal arises out of the order dated 20.04.2006 passed by the High Court of Madhya Pradesh, Indore Bench in Civil Revision No. 63/2005, reversing the order dated 8.1.2005 passed by the Additional District Judge, Narsingharh, District Rajgarh, Madhya Pradesh in Civil Appeal No. 80-A/2004, consequently restoring the order dated 11.07.2002 passed by the Court of the Civil Judge, Class-I, Narsingharh, District Rajgarh, Signature Not Verified Digitally signed by NEELAM GULATI Date: 2017.09.16 11:23:36 IST Reason:

Madhya Pradesh in Succession Case No. 3/2002.

2. Brief facts leading to this appeal are, that the appellant herein is the husband of Srimati Mooli Swarnkar, who was working as an Assistant Teacher in Government Girls Higher Secondary School Narsingharh, District Rajgarh, Madhya Pradesh; Srimati Mooli Swarnkar died on 18.11.2001, on account of liver cancer and disease of Hepatitis 'B'. The married couple, i.e, the appellant and his wife – Srimati Mooli Swarnkar did not have any issue, and hence the appellant being her husband and as her

only successor claimed to be entitled to receive the retiral benefits, such as, Pension, G.P.F., Death-cum-Retirement Gratuity, Family Welfare Fund, Group Insurance Scheme account etc. Hence, the appellant filed an application on 7.5.2002 before the Civil Judge, Class-I, Narsinghgarh, District Rajgarh, Madhya Pradesh, under Section 372 of the Indian Succession Act (hereinafter referred to as 'the Act'), for grant of a succession certificate of his wife late Srimati Mooli Swarnkar, so as to entitle him to receive the aforementioned retiral benefits. The respondents herein, who were the sons of the brother of late Srimati Mooli Swarnkar also laid their claim in respect of the afore-mentioned retiral benefits of late Srimati Mooli Swarnkar, on the basis of the will, said to have been executed by her on 18.11.2001, i.e., on the day of her death. In other words, the respondents filed counter claim in the application filed by the appellant under Section 372 of the Act. The respondents further claimed, that the deceased had submitted nomination forms dated 16.11.2001 (Ex. D/1 to D/5) to her employer in which the names of the respondents were mentioned as her nominees.

3. Learned Civil Judge, Narsinghgarh vide his order dated 9.10.2004 passed in Succession Case No.3/2002 dismissed the application filed by the appellant for grant of a succession certificate, and allowed the counter claim put forth by the respondents. Against the said order passed by the Civil Court, the appellant preferred Civil Appeal No. 80-A/2004 before the Additional District Court, Narsinghgarh, which came to be allowed on 8.1.2005 and consequently the order of the Civil Court, dismissing the claim of the appellant and allowing the counter claim of the respondents was set aside. In effect, the Additional District Judge, Narsinghgarh ordered for grant of a succession certificate to the appellant. However, the judgment of the Additional District Court was set aside by the High Court of Madhya Pradesh, as mentioned supra, in Civil Revision No. 63/2005 on 20.04.2006, and the order of the Civil Court rejecting the application for grant of a succession certificate filed by the appellant was upheld. Hence, this appeal.

4. Learned advocates on both sides have taken us to the material available on the record. Learned counsel for the appellant submitted that the signature of Srimati Mooli Swarnkar affixed on Ex. D/6 (will in question), does not correspond to the signatures affixed on certain other documents. Learned counsel for the appellant contended, that the signatures of Srimati Mooli Swarnkar found on Ex. P/4, D/7 and D/8 do not tally with the signature found on Ex. D/6 (disputed signature). He further submitted that it was not at all possible for the deceased Srimati Mooli Swarnkar to execute the will on the date of its alleged execution, inasmuch as she was suffering from liver cancer and Hepatitis 'B' disease and was not in a position to take any decision on her own free will and immediately after the execution of the will, she expired. The execution of the alleged will is surrounded by suspicious circumstances, and such suspicious circumstances are not explained by the respondents. Per contra, learned counsel for the respondents contended, that the Civil Court as well as the High Court are justified in concluding that the will is duly proved, inasmuch as one of the attesting witnesses who was alive during the relevant point of time had supported the execution of the document in question. Since, there is no suspicious circumstance, learned counsel for the respondents prays for upholding the order of the High Court.

5. The entire case centers around the proof of due execution of the alleged will. Ex. D/6 is said to have been executed by the deceased Srimati Mooli Swarnkar on 18.11.2001. Indisputably, the deceased Srimati Mooli Swarnkar died on 18.11.2001. The nomination forms in favour of the husband – appellant herein were executed by the deceased on 3.3.1992. Similarly, nomination with regard to Provident Fund and Death-cum-Retirement Gratuity were also executed by the deceased in favour of the appellant. However, just two days prior to her death, i.e., on 16.11.2001 at about 7 p.m., the deceased allegedly executed a nomination form as per Ex.D/1 in favour of the respondents, and that too in Care Well Hospital at Bhopal. Similarly, other documents produced by the respondents (Ex. D/2, D/3, D/4 and D/5) were also executed by the deceased in favour of the respondents at the very point of time. The deceased allegedly executed the will in question before the Oath Commissioner on 18.11.2001 as per Ex.D/6 in the early hours of

18.11.2001. The letter allegedly written by the deceased Srimati Mooli Swarnkar as per Ex. D/7 discloses that she has informed the authorities that the appellant has been asking money from her and he had beaten her quite often, and hence she is cancelling the nomination executed in favour of the appellant, and then she has cancelled the nomination made in favour of the appellant.

6. Shri Dhannalal Mahavar – respondents' witness has deposed that on 18.11.2001 at about 7 to 8 a.m., deceased Srimati Mooli Swarnkar executed the will and that he signed the will as an attesting witness. The witnesses on behalf of the respondents have also deposed, that there was no cordial relationship between the appellant and the deceased for ten years prior to her death. They have also deposed about the cancellation of the nomination made earlier in favour of the appellant.

7. Curiously, the High Court has not at all discussed the case as put forth by the appellant. We find that the approach of the High Court is one sided. The non-consideration of the material placed by the appellant herein before the High Court has constrained us to verify the entire evidence to satisfy our judicial conscience. On consideration of the entire material on record, we find that the will is surrounded by suspicious circumstances.

8. Ex. P/4 discloses that Srimati Mooli Swarnkar attended the school as a teacher up to 1.10.2001, and thereafter she remained on medical leave. It is also not in dispute, that the deceased was suffering from liver cancer and Hepatitis 'B' disease. Admittedly, the will was executed between 7 to 8 a.m. on 18.11.2001, and after few hours she expired on the very same date. The attesting witness of Ex. D/6, namely, Shri Dhannalal Mahavar (NAW/02) has admitted in the cross-examination that he is a government hospital compounder. The deceased was being treated in a hospital at Bhopal. At about 5.30 a.m. on 18.11.2001, a telephone call was received by Shri Brijmohan Soniji, who is the father of respondent no.1, and immediately thereafter he arrived at the site, i.e. in the hospital at Bhopal. It is admitted by the attesting witness and other witnesses who were allegedly present at the time of the execution of the will that the hands of Srimati Mooli Swarnkar were shivering while signing Ex. D/6. At that point of time, Srimati Mooli Swarnkar was very weak and she was administered drip. The health condition of Srimati Mooli Swarnkar had deteriorated when the drip was being administered. Therefore, in our considered opinion, the first appellate Court was justified in concluding that the propounder of the will was not successful in proving that the will was executed in a healthy state of mind as well as body of the deceased and without any pressure. The will is surrounded by suspicious circumstances mentioned supra. Similar observation needs to be made in respect of nomination forms also, which were allegedly executed by the deceased just prior to her death on 18.11.2001, i.e., on 16.11.2001. Admittedly, the deceased was on medical leave. The nomination forms allegedly signed by the deceased were placed before the concerned department by the relatives and other family members of the respondents. Upon comparison of the disputed and other signatures of the deceased Srimati Mooli Swarnkar on Ex. P/4, D/7, D/8 and the alleged will Ex. D/6, the first appellate Court on facts has concluded that the signatures found on Ex. D/6 were totally different.

9. We find from the records that the condition of the testator's mind and body was very feeble and debilitated. The signature of the testator was allegedly taken on the death bed while she was administered drip. The dispositions made in the will may not be the result of the testator's free will and mind. In such cases, the Court would naturally expect that all legitimate suspicions should be completely removed before the document is accepted as the last will of the testator. The presence of such suspicious circumstances naturally tends to make the initial onus very heavy and unless it is satisfactorily discharged, Courts would be reluctant to treat the document as the last will of the testator. Since there are many suspicious circumstances narrated above, and as we are satisfied that the dispositions made in the alleged will may not be as a result of testator's free will and mind, the Civil Court as well as the High Court are not justified in coming to the conclusion that the will Ex.D/6 is duly executed by the deceased. The

respondents being the propounders of the will have failed to satisfy the judicial conscience of this Court regarding due execution of the will. Since the suspicious circumstances relate to the genuineness of the signatures of the testator, as well as the condition of the testator's mind and the dispositions made in the will being unfair, the judgment of the High Court restoring the judgment of the Civil Court is liable to be set aside.

10. Accordingly, the instant appeal is allowed, the judgment of the High Court dated 20.04.2006 passed in Civil Revision No. 63/2005, restoring the judgment of the Civil Court dated 9.10.2004 passed in Succession Case No. 03/2002 is set aside, and the judgment of the first appellate Court dated 8.1.2005 passed in Civil Appeal No. 80-A/2004 is restored. It is held that the appellant, being successor of the deceased Srimati Mooli Swarnkar, is entitled to receive all retiral benefits of his wife, such as, Pension, Gratuity, G.P.F., Family Welfare Fund, Insurance etc. No order as to costs.

.....J.

[ARUN MISHRA]

[MOHAN M. SHANTANAGOUDAR] NEW DELHI;

SEPTEMBER 15, 2017.

ITEM NO.1502

COURT NO.10

SECTION IV-A

S U P R E M E C O U R T O F I N D I A

R E C O R D O F P R O C E E D I N G S

Civil Appeal No (s). 6388/2009

PRAKASH SONI

Appellant(s)

V E R S U S

DEEPAK KUMAR & ANR.

Respondent(s)

Date : 15-09-2017 This appeal was called on for hearing today.

For Appellant(s) Ms. Pratibha Jain, AOR

For Respondent(s) Mr. Mohd. Parvez Dabas, Adv.

Mr. Uzmi Jameel Husain, Adv.

Mr. Shakil Ahmed Syed, AOR

Hon'ble Mr. Justice Mohan M. Shantanagoudar pronounced the judgment of the Bench comprising Hon'ble Mr. Justice Arun Mishra and His Lordship.

Appeal is allowed in terms of the Signed Non Reportable Judgment.

(NEELAM GULATI)
COURT MASTER (SH)

(TAPAN KUMAR CHAKRABORTY)
BRANCH OFFICER