

Before Hon'ble S. D. Agarwala & N. K. Sodhi, JJ.

KANWARJIT SINGH DHILLON,—*Petitioner.*

versus

HARDYAL SINGH DHILLON AND OTHERS,—*Respondents.*

L.P.A. 854 of 1991

December 1, 1993.

Indian Succession Act, 1925—Ss. 222, 283 and 300—Functions of Probate Court—Is only to see that will has been duly executed by testator in a sound disposing mind, without any coercion or undue influence.

Held, that it is by now well settled that the functions of a probate court are to see that the Will has been actually executed by the testator in a sound disposing state of mind without coercion or undue influence and that it has been duly attested. It is not competent for such a Court to determine whether the testator had or had not the power to dispose of by his will. It is also not the function of the probate nor will the Court go into the question whether the property disposed of by the Will was joint, ancestral property or self-acquired property of the testator or to find out whether the person making the bequest of certain property had title to the same. The probate Court should also not decide who are the persons beneficially interested in the estate and the question whether the bequest is good or bad is not within its domain/purview.

(Para 7)

Will-proof thereof—Onus to prove due execution of will lies upon person propounding the same.

Held, that the onus to prove the execution of a will always lies in every case upon the person propounding the same and he must satisfy the conscience of the Court that the instrument so propounded is the last will of a free and capable testator. If disinterested and satisfactory evidence in this respect has been brought on the record, the finding in favour of the propounder would be justified. Another rule, however, is that if circumstances exist which excite suspicion of the Court and whatever their nature be, it is for those who propound the will to remove such suspicion and to prove the fact that the testator knew the contents of the Will. It is only where this is done that the onus shifts to those who oppose the will to prove fraud or undue influence of whatever they rely upon to displace the case of the propounder.

(Para 7)

Will—Suspicious circumstances—Deceased made no provision for divorced daughter even though she was divorced during his life time—Entire property left to bachelor son excluding son with children. Held that these facts did not constitute suspicious circumstances.

Held, that the argument is that in the normal course of things the property ought to have been bequeathed to the sons who had children. In our opinion these are hardly any suspicious circumstances and the execution of the Will as propounded by Hardyal Singh Dhillon stands duly proved in the circumstances of the present case.

(Para 9)

B. S. Khoji, Advocate, *for the Appellant.*

M. S. Khaira, Sr. Advocate with K. S. Bakshi, Advocate, *for the Respondents.*

JUDGMENT

N. K. Sodhi, J.

(1) This appeal under Clause X of the Letters Patent is directed against an order of a learned single Judge whereby he allowed the petition filed by Hardyal Singh Dhillon-respondent under Section 276 of the Indian Succession Act, 1925 (for short, 'the Act') for the grant of a probate. Facts necessary for the disposal of the appeal may first be noticed.

(2) Kirpal Singh Dhillon retired as Assistant Director of Industries, Punjab and he died on October 31, 1979 at the age of about 67 years. At the time of death he owned the following properties :-

- (i) House No. 148, Sector 27-A at Chandigarh ;
- (ii) Agricultural land measuring 48 kanals 10 marlas and one vacant residential site besides a tubewell at his native village Talwandi Abdar, Tehsil & District Jalandhar ; and
- (iii) 2 deposits of Rs. 20,000 and Rs. 10,000 with private companies besides some other movable property.

He has left behind three sons and two daughters besides his widow. Hardyal Singh Dhillon-respondent who is his eldest son and is a bachelor filed a petition under sections 276/278 of the Act for the grant of a probate in regard to the Will dated July 22, 1978 said to have been left by his father late Sardar Kirpal Singh Dhillon bequeathing his entire property in favour of the petitioner-respondent. The Will in original was annexed with the petition. The widow of the testator and his other children were impleaded as respondents besides the general public.

(3) In response to the notice issued, Kanwarjit Singh Dhillon-appellant opposed the petition. In his written statement he denied that Kirpal Singh Dhillon ever signed or executed the Will dated July 22, 1978. It was pleaded that the Will propounded by Hardyal Singh Dhillon-respondent was a forged document and altogether unnatural. According to the appellant it was not stated in the Will where it had been executed and the witnesses who purported to have attested the Will were neither related to the testator nor were the residents of the locality where the testator resided. It was further pleaded by the appellant that Hardyal Singh Dhillon remained posted in connection with his service at various stations outside Chandigarh and therefore, he could not serve his late father and on the contrary the appellant who remained posted at Rajpura lived with the father and served the testator. It was also alleged that the property left by the deceased was ancestral.

(4) In their separate written statement the widow of the deceased and his daughters (sisters of the appellant) admitted the claim of Hardyal Singh Dhillon and stated that they had no objection to the grant of probate in his favour.

(5) Hardyal Singh Dhillon controverted the averments of the appellant by filing a replication in which it was pleaded that the property in question was self-acquired property of the testator.

Pleadings of the parties gave rise to the following two issues :—

1. Whether the Will dated 22nd July, 1978 is the duly and legally executed last testament of the deceased-Sardar Kirpal Singh Dhillon ? OPP
2. Whether the probate/letter of administration is liable to be refused on the facts stated in the additional pleas of the written statement of respondent-6 ? OPR.

(6) After examining evidence led by the parties and considering the respective submissions made by their counsel, the learned Judge as per his order of April 5, 1991 decided both the issues in favour of the petitioner-respondent and consequently allowed the petition. The probate asked for was directed to be issued. Kanwarjit Singh Dhillon who alone contested the petition has come up in appeal.

(7) We have heard counsel for the parties at length. It is by now well settled that the functions of a probate Court are to see that

the Will has been actually executed by the testator in a sound disposing state of mind without coercion or undue influence and that it has been duly attested. It is not competent for such a Court to determine whether the testator had or had not the power to dispose of the property which he purports to dispose of by his Will. It is also not the function of the probate Court to determine questions of title to the property nor will the Court go into the question whether the property disposed of by the Will was joint ancestral property or self-acquired property of the testator or to find out whether the property of the testator or to find out whether the person making the bequest of certain property had title to the same. The probate Court should also not decide who are the persons beneficially interest in the estate and the question whether the bequest is good or bad is not within its domain/purview. There is no gainsaying the fact that the onus to prove the execution of a Will always lies in every case upon the person propounding the same and he must satisfy the conscience of the Court that the instrument so propounded is the last Will of a free and capable testator. If disinterested and satisfactory evidence in this respect has been brought on the record, the finding in favour of the propounder would be justified. Another rule, however, is that if circumstances exist which excite suspicion of the Court and whatever their nature be, it is for those who propound the Will to remove such suspicion and to prove the fact that the testator knew the contents of the Will. It is only where this is done that the onus shifts to those who oppose the Will to prove fraud or undue influence or whatever they rely upon to displace the case of the propounder.

(8) In the present case, the Will Exhibit PW3/2 is an unregistered document which is type-written on 2 pages. Both the pages are signed by the testator. It is attested by Kashmir Singh son of Manna Singh and Sarv Nandan Singh son of Ganga Singh. Petitioner-respondent examined both the attesting witnesses. Sarv Nandan Singh who appeared as PW 4 stated that he had signed the Will as an attesting witness in the presence of the testator and the other witness Kashmir Singh had also similarly appended his signatures in his presence and in the presence of the testator and that the testator had signed in their presence. According to this witness, the Will had been typed by one Chaman Lal a typist who was working in some Company and had been called for the purpose. To the same effect is the statement of Kashmir Singh-PW5 the other attesting witness. Hand-writing experts were produced by both the parties in support of their respective cases. Both of them have, however, stated that the Will in question bears the signatures of Kirpal Singh Dhillon, the testator. They had compared his signatures on the Will with the admitted

signatures of the testator contained in the Pension Payment Order Exhibit PW2/1 which was produced from the records of the State Bank of India, Sector 17, Chandigarh from where the testator was drawing his pension. Hardyal Singh Dhillon-petitioner respondent who is the eldest son of the testator also identified the signatures of his father on the Will Exhibit PW3/2. He while appearing as PW 3 also stated that his father enjoyed good health and sound disposing mind till the end and that in fact on the day he died he had personally gone and collected his last pension from the Bank. He died of heart failure later in the day. He further stated that his brother Kanwarjit Singh Dhillon had married against the wishes of the family and their father was unhappy on this account. Kanwarjit Singh Dhillon, according to the witness, had strained relations with the father and other members of the family with whom he used to fight on several occasions. Smt. Surjit Kaur widow of Kirpal Singh Dhillon also appeared in the witness box to support the version of Hardyal Singh Dhillon. She too stated that her husband was hale and hearty till the end and died at about 1.00 P.M. after he had collected his pension in the morning. She further stated that the testator had strained relations with Kanwarjit Singh Dhillon appellant. According to her, the appellant used to fight with her and her husband and had been ill-treating them causing her and her husband immense mental pain and suffering. She also stated that Kanwarjit Singh Dhillon had married against their wishes and that they did not attend his wedding. From the statements of all these witnesses, the learned Judge, in our opinion, rightly concluded that the testator was of sound disposing mind at the time of his death and that he had validly executed the Will in question. There is nothing on the record except the statement of the appellant himself that the testator was unwell at the time of the execution of the Will and that he was not of sound disposing mind. The learned Judge was also right in not relying on the statement of the appellant as he, in our opinion, has not stated the truth and was an interested witness. According to him, his relations with his parents were normal and that he married with the knowledge and consent of his parents. He stands contradicted by his own mother and there is no reason why she should be disbelieved. As a matter of fact, the entire family of the testator is on the side of Hardyal Singh Dhillon and the mother has deposed against the appellant. We are satisfied that Kirpal Singh Dhillon must have been unhappy with his youngest son who is the appellant and it is for this reason that he had not given any part of his property to him. As has been stated in the Will the testator had already transferred by way of a gift 5 acres of land in village Talwandi Abdar, Tehsil and District Jalandhar in favour of the appellant and that since the latter had

caused immense pain, suffering and agony to the testator he did not wish to give any more of his property to him.

(9) Counsel for the appellant then contended that in any case the Will in question was surrounded by suspicious circumstances in as much as the deceased made no provision for his divorced daughter even though she was divorced during his life time. It was also pointed out that a Jat Sikh like the testator has a desire that his family should continue after him and, therefore, in the normal course he could not have bequeathed his property in favour of Hardyal Singh Dhillon who was a bachelor. The argument is that in the normal course of things the property ought to have been bequeathed to the sons who had children. In our opinion, these are hardly any suspicious circumstances and the execution of the Will as propounded by Hardyal Singh Dhillon stands duly proved in the circumstances of the present case. Accordingly, we uphold the findings of the learned Single Judge and decide both the issues against the appellant.

(10) In the result, there is no merit in the appeal and the same stands dismissed. There is no order as to costs.

R.N.R.

Before Hon'ble G. R. Majithia & S. K. Jain, JJ.

THE HARYANA STATE CO-OPERATIVE INSPECTORS AND
SUB-INSPECTORS ASSOCIATION, ROHTAK,—*Petitioners.*

versus

THE STATE OF HARYANA AND OTHERS,—*Respondents.*

Civil Writ Petition No. 13348 of 1992

December 15, 1993.

Constitution of India, 1950—Arts. 226 & 227—Haryana Co-operative Department Group C (Executive) Rules 1980—Writ of Prohibition not to give effect to provisions of said rules—Post of Statistical Assistants included in service to which 1980 Rules apply for promotion from Class III (Executive Branch) to Class II—Statistical Assistants encadred as State service Class III (executive Branch) eligible for promotion to Class II service—Rule challenged on ground that petitioners condition of service varied to their disadvantage (without prior approval as required under section 82 of Punjab Reorganization Act) as Statistical Assistants have their own channel of promotion and could not be included in State Service Class II (Executive Branch)—Held submission is devoid of any merit.