Smt. Malkani vs Jamadar And Ors. on 5 February, 1987

Equivalent citations: AIR1987SC767, JT1987(1)SC419, 1987(1)SCALE342, (1987)1SCC610, 1987(1)UJ382(SC), AIR 1987 SUPREME COURT 767, 1987 (1) SCC 610, (1987) 1 JT 419 (SC), 1987 (1) UJ (SC) 382, 1987 UJ(SC) 1 382, 1987 (1) LANDLR 485, (1987) 2 GUJ LH 75, (1987) 1 LANDLR 295, (1987) 1 SUPREME 581

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Bench: A.P. Sen, K.N. Singh

JUDGMENT

A.P. Sen, J.

1. This appeal by special leave is directed against the judgment and decree of the Punjab & Haryana High Court dated April 30, 1979 arising out of a suit brought by the appellant, as plaintiff, for declaration of her one-sixth share in the suit lands and for joint possession against the respondents who are her paternal cousins, on the allegation that they had abducted her mother Mst. Pari and that the alleged will dated August 24, 1972, Exh. D 1, purported to have been executed by her mother in their favour was not genuine but had been procured by fraud. Her case was that her mother Mst. Pari had been abducted by the respondents and they got the will executed, and that case has not been substantiated. Both the learned Additional District Judge as well as the learned Subordinate Judge have on a consideration of the evidence held that due execution of the will, Exh. D-l, as well as its attestation were proved and also that there were no suspicious circumstances surrounding its execution which create doubt as to the testamentary capacity of the testatrix or tend to show that she did not make the disposition of her own free will. The High Court dismissed the second appeal in limine inasmuch as there was no question of law much less a substantial question of law to attract s. 100 of the CPC, 1908.

2. Shri K.G. Bhagat, learned Counsel for the appellants contends, firstly, that the alleged will was not a natural one as there was no reason for Mst. Pari to have disinherited her daughter Mst. Malkani, particularly when she died at her residence within a short time there after, and secondly, that this was a case where the profounder had taken a prominent part in the execution of the will and that by itself is generally treated as a suspicious circumstance surrounding the execution of the will and that the defendants as propounders were required to remove such suspicion by clear and unimpeachable evidence. Reliance is placed on the three decisions of this Court in H. Venkatachala lyengar v. B.N. Thimmajamma and Ors. (1959) Suppl. 1 SCR 426, Smt. Jaswant Kaur v. Smt. Amrit Kaur and Ors. and Smt. Indu Bala Base and Ors..v Manindra Chandra Base and Anr. .

3. After hearing the learned Counsel at considerable length, we find it difficult to interfere with the findings of fact reached. There is no dispute with the proposition laid down in the cases relied upon, but the difficulty is about its application to the facts and circumstances of the present case. The learned Additional District Judge had taken the case of observing that the only circumstance brought out was that the defendants who were the beneficiaries under the will, Exh. D-l, had taken an active part in its execution. But he rightly observed that that by itself was not sufficient to create any doubt either about the testamentary capacity of Mst. Pari or the genuineness of the will. It is quite evident that the testatrix was determined in bequeathing the property to her husband's brother's sons to the exclusion of the plaintiff. It is brought out in evidence that the plaintiff had on July, 25, 1972 made a report to the Tehsildar alleging that her mother Mst. Pari had been abducted by the defendants and that they were about to get a conveyance executed by her in their favour. Thereafter on August 23, 1972 i.e., just a day before the execution of the will, she instituted a suit being Civil Suit No. 491/72 claiming a declaration of her title as against her mother Mst. Pari. These circumstances taken together clearly give rise to an inference that the plaintiff knew that her mother was about to execute a will and she tried to prevent her from doing so. But this did not prevent Mst. Pari from executing the will on the next day. After the execution of the will, Mst. Pari admittedly came and lived with the plaintiff till her death on January 1, 1973. If the allegation that the defendants had procured the will by fraud were to be believed, it was but expected, according to the ordinary course of human conduct, that Mst. Pari would have made a report to the authorities against the defendants or revoked the will. The fact remains that she did not execute another will during her life time. This evidently shows that the will, Exh. D-l, was a genuine will and was intended to be acted upon.

4. The result therefore is that the appeal must fail and is dismissed. No costs.