Gopal Krishan vs Daulat Ram on 2 January, 2025

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Bench: Sanjay Karol, C.T. Ravikumar

2025 INSC 18

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S) 13192 OF 2024
(Arising out of Special Leave Petition (Civil) No.25645 of

GOPAL KRISHAN & ORS.

VERSUS

DAULAT RAM & ORS.

JUDGMENT

SANJAY KAROL J.

1. Impugned in this appeal is the judgment and order of the Punjab and Haryana High Court in RSA No. 1935 of 2015 dated 26th March 2018 whereby it has been held that the Will, subject matter of controversy, allegedly of one Sanjhi Ram, had not been proved, thereby finding that the Lower Appellate Court1 had erred in holding otherwise. The said Lower Appellate Court had set aside the decree of the Civil Court2 which had found that the Will and the subsequent Civil Appeal No. 27 of 2011, judgment dated 5th September 2014 delivered by The Court of Additional District Judge (Adhoc), Fast Track Court, Gurdaspur.

Civil Suit No. 282 of 2006, judgment dated 24 th February 2011 delivered by Civil Judge, Senior Division, Gurdaspur.

mutation of the properties enumerated therein was bad in law, as the Will was “illegal”, “null” and “void”. The question that falls for our consideration is-

“What do the words “by the direction of the testator” as they appear in Section 63 (c) of the Indian Succession Act, 1925 mean? Is the term to be interpreted liberally or strictly? Consequently, was the High Court correct in holding, in agreement with the Civil Court, that the Will, subject matter of dispute, stood not proved?”

2. Facts, shorn of unnecessary details, as they appear from the record are as follows: -

> 2.1 Sanjhi Ram3, was the owner of 1/4th share of land measuring 40 canals, 3 marlas, comprised in Khewat no.7, Khatauni no.9, Rett no. 9, Kila no. 9/8 situated in the Revenue Estate of Village Umarpura, Khurd, Tehsil and District Gurdaspur, Punjab. His share in the aforesaid property was to the extent of 10 canals and 1 marla4.
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> 2.2 The Testator had no children and resided with his nephew Gopal Krishan5. He executed a Will on 7th November 2005 and passed away the next day on 8th November 2005. The death certificate issued by the competent authority is dated 19th November 2005.
>
> 2.3 Having received the property by virtue of the aforesaid Will, the appellant transferred the same in favour of his four sons viz., Ravinder Kumar; Rajinder Kumar; Satish Kumar and Roop Lal vide Sale Deed dated 16th January 2006. The said property was sold jointly for a sum of Rs.98,000/- to Madhu Sharma and Meena Kumari, vide Sale Deed dated 3rd February 2006.
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> 2.4 Respondent nos.1 to 7 herein filed a Suit bearing No. 282 of 2006 before the Civil Court, seeking declaration to the effect inter alia (i) that the plaintiffs (respondents herein) were the owners of Sanjhi Ram's 1/4 th share; (ii) that the Will dated 7th November 2005 was forged and fabricated;

Testator Suit property Hereafter appellant no.1 and (iii) that the mutation carried out subsequent to the execution of such a Will is illegal and not binding on the plaintiffs. 2.5 By way of written statement dated 24th April 2006 the contentions made in the plaint were denied.

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3. The Trial Court framed seven issues primarily pertaining to, (a) validity of the Will subject matter of the present lis; (b) whether the plaintiffs are estopped by their act and conduct from filing the suit; and (c) whether the plaintiffs have the locus standi to file the suit and whether the same is maintainable, within limitation and filed with sufficient court fees, being affixed thereto.

3.1 Of primary importance to the present adjudication is the findings qua issue no.1. The relevant extracts from the judgment of the Civil Court are as below:-

> "10. On going through the file I find it has been admitted by the witnesses of the defendants that Sanjhi Ram remained ill. The claim of the Plaintiffs is that he died on 7.11.2005 and the claim of the Defendants that the died on 8.11.2005. The defendants did not being the death certificate of Shri Sanjhi Ram on the file and thus failed to rebut the contention of the Plaintiffs. The visit of Sanjhi Ram at Tehsil Gurdaspur on 7.11.2005 and then executing the Will on the said day without any registration of the same and adjustment of lines on the page in the lower portion and further adjusting

> the seal by the scribe in the left margin and further the place the thumb mark alleged to be of Sanjhi Ram make the will suspicious which cannot be relied on."

4. On appeal the Lower Appellate Court relied on a judgment returned by a Division Bench of the High Court of Judicature at Allahabad and one judgment of the Rajasthan High Court to hold that even if the Testator was ill, so long as his mental faculties were not affected, no inference could be drawn that he was not of sound state of mind or that he could not execute a Will. In the facts of the instant case, it was observed that nowhere did the case record reflect that Sanjhi Ram's mental faculties were in any way questionable nor was he disoriented or affected by illness. In regard to other observations of the Civil Court reproduced (supra) the Lower Appellate Court held as under:-

> "16. As noted above, learned Lower Court had found the Will Ex.D1 suspicious also for the reason that the spacing in between last lines in this Will was narrower than the space available between lines in remaining upper part of this Will. In this context learned counsel for the appellants has relied upon Judgment Bahadur Singh versus Poonam Sin h & Ors, (Supra) which applies to the facts of the case in hand. Vide it Hon'ble High Court categorically observed that merely because the spacing of last two three lines is less than the earlier lines it cannot be said that the Will is not genuine. To accommodate writing in one page, sometimes last lines are written closely and therefore such circumstances should not be considered as adverse circumstances. In the case in hand also Will Ex.P1 is on a single page. Moreover, the lines on more than two third of this page have equal spacing between them. It is in the last 1/3rd part of the page of Will that spacing goes on narrowing. When the Will is on a single page only narrowing of space towards end of the writing has to be taken as a natural phenomenon." Having observed as above, the Will was held to be valid and genuine, so also it was held that the consequent sale deeds cannot be held invalid. The judgment of the lower Court was set aside.

5. In second appeal the High Court found that: -

> (A) The reduction of space while concluding the Will had "totally escaped the notice of the Court's below", and that this was a glaring illegality and perversity. The attesting witness, Janak Raj (DW-1) had not stated in his examination that his thumb print had been appended to the Will upon the direction of the Testator which is a requirement in law. For such a conclusion, reliance was placed on Janki Narayan Bhoir v. Narayan Mandeo Kadam6 and the Judgment of the Division Bench of the High Court titled Kanwaljit Kaur v. Joginder Singh Badwal (deceased through LRs)7.
>
> (B) Placing reliance on the Constitution Bench Judgment of this Court in Pankajakshi (Dead) through LRs v. Chandrika and Ors.8, the Court without framing substantial questions of law set aside the judgment of the Lower Appellate Court. The appeal preferred by the present respondents was thus allowed.

6. Having traversed the Courts below as aforesaid, the dispute stands before us. We have heard the learned counsel for the parties.

7. Section 63 of the Indian Succession Act, 1925 runs thus:-

> "63. Execution of unprivileged Wills.— Every testator, not being a soldier employed in an expedition or engaged in actual warfare, or an airman so employed or engaged, or a mariner at sea, shall execute his Will according to the following rules:—
>
> (a) The testator shall sign or shall affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction.
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> (b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a Will.
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> (c) The Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgement of his signature or mark, or the signature of such other person; and each of the witnesses shall sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary." (emphasis supplied) As seen above, Section 63(c) enumerates five distinct situations:
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> (2003) 2 SCC 91 (2016) 6 SCC 157 A is the testator of the Will in question. B and C have signed the Will. For B and C to qualify as attestors,-

Situation 1:

> Each of them has to have seen A sign the will or put his mark on it;
>
> OR Situation 2:
>
> They should have seen some other person, let's say D sign the will in the presence of and on the direction of A;
>
> OR Situation 3:
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> They ought to have received a personal acknowledgment from A to the effect that A had signed the Will or has affixed his mark thereon; With the use of the conjunctive, 'and' one further stipulation has been provided: B, C, D or any other witness is required to sign the Will in the presence of A however it is not necessitated that more than one witness be present at the same time.

> The statutory language also clarifies that B and C, the attestors, are not required to follow any particular prescribed format.

8. The requisites for proving of a Will are well established. They were recently reiterated in a Judgment of this Court in Meena Pradhan and others v. Kamla Pradhan and Another9. See also Shivakumar and Others v. Sharanabasappa and Others10. The principles as summarised by the former are reproduced as below:-

> "...10.1. The court has to consider two aspects : firstly, that the will is executed by the testator, and secondly, that it was the last will executed by him;
>
> 10.2. It is not required to be proved with mathematical accuracy, but the test of satisfaction of the prudent mind has to be applied. 10.3. A will is required to fulfil all the formalities required under Section 63 of the Succession Act, that is to say:
>
> (a) The testator shall sign or affix his mark to the will or it shall be signed by some other person in his presence and by his direction and the said signature or affixation shall show that it was intended to give effect to the writing as a will;
>
> (b) It is mandatory to get it attested by two or more witnesses, though no particular form of attestation is necessary;
>
> (c) Each of the attesting witnesses must have seen the testator sign or affix his mark to the will or has seen some other person sign the will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of such signatures;
>
> (d) Each of the attesting witnesses shall sign the will in the presence of the testator, however, the presence of all witnesses at the same time is not required;

10.4. For the purpose of proving the execution of the will, at least one of the attesting witnesses, who is alive, subject to the process of court, and capable of giving evidence, shall be examined; 10.5. The attesting witness should speak not only about the testator's signatures but also that each of the witnesses had signed the will in the presence of the testator;

10.6. If one attesting witness can prove the execution of the will, the examination of other attesting witnesses can be dispensed with; 10.7. Where one attesting witness examined to prove the will fails to prove its due execution, then the other available attesting witness has to be called to supplement his evidence;

10.8. Whenever there exists any suspicion as to the execution of the will, it is the responsibility of the propounder to remove all legitimate suspicions before it can be accepted as the testator's last will. In such cases, the initial onus on the propounder becomes heavier; (2023) 9 SCC 734 (2021) 11 SCC 277 10.9. The test of judicial conscience has been evolved for dealing with those cases where the

execution of the will is surrounded by suspicious circumstances. It requires to consider factors such as awareness of the testator as to the content as well as the consequences, nature and effect of the dispositions in the will; sound, certain and disposing state of mind and memory of the testator at the time of execution; testator executed the will while acting on his own free will;

10.10. One who alleges fraud, fabrication, undue influence et cetera has to prove the same. However, even in the absence of such allegations, if there are circumstances giving rise to doubt, then it becomes the duty of the propounder to dispel such suspicious circumstances by giving a cogent and convincing explanation;

10.11. Suspicious circumstances must be "real, germane and valid" and not merely "the fantasy of the doubting mind [Shivakumar v. Sharanabasappa, (2021) 11 SCC 277] ". Whether a particular feature would qualify as "suspicious" would depend on the facts and circumstances of each case. Any circumstance raising suspicion legitimate in nature would qualify as a suspicious circumstance, for example, a shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the will under which he receives a substantial benefit, etc."

9. This case raises the question whether the third requirement u/s 63 of the Act stands met in the present case particularly as to the contours of the meaning of the phrase 'direction of the testator'.

10. The word 'direction', as discussed in the Cambridge Dictionary, can be employed in various contexts – (a) giving instructions to someone to find a particular place or location; (b) looking to an area or position where someone is placed; (c) a sense of direction i.e., the ability to find or locate a particular place;

(d) control or instruction; and (e) information or orders telling somebody how or what to do.

11. The present case concerns (d) and/or (e) as above. The view taken by the High Court is that the attesting witness, in his deposition, did not state that the act of affixing his thumb impression on the Will subject matter of dispute was at the direction of the Testator and, therefore, the requirement stipulated u/s 63 Iof the Act was not met.

12. The abovesaid conclusion of the High Court is based on the testimony of Janak Raj, who is DW-1. His testimony reads as under:-

> "1. That I know both the parties. I also knew Sanjhi Ram, Son of Shri Tulsi Ram, who was a resident of our Village. He was residing at Gopal Krishan. Sanjhi Ram died issueless. His wife is predeceased him. Gopal Krishan used to serve deceased Sanjhi Ram and was looking after him. Shri Sanjhi Ram who was real uncle of Gopal Krishan, while possessed of sound disposing mind, executed a valid Will on 7.1.2005 in favour of Gopal Krishan. I have seen the original WILL which bears my thumb impression. The WILL is Ex.D.1. The same was scribed by the Deed Writer at the instance of Shri Sanjhi Ram. He further scribing the same, read over and explained

> the contents of the WILL Ex.D1. Sh. Sanjhi Ram after admitting the contents of the WILL, appended his thumb impression in my presence and as well as in the presence of other attesting witness Sh. Tarsem Lal and thereafter I and other attesting witness put my thumb impression and signature respectively. On the basis of WILL Ex.D.1 Shri Gopal Krishan defendant is owner in possession of the land of the land of Shri Sanjhi Ram. The Plaintiffs have got no right, title or interest in the land let by Shri Sanjhi Ram. ..." (emphasis supplied)

13. The language of Section 63(c)of the Act uses the word 'OR'. It states that each Will shall be attested by two or more witnesses who have seen the Testator sign or affix his mark on the Will OR has seen some other persons sign the Will in the presence and by the direction of the Testator OR has received a personal acknowledgment from the Testator of his signature or mark etc. What flows therefrom is that the witnesses who have attested the Will ought to have seen the Testator sign or attest his mark OR have seen some other persons sign the Will in the presence of and on the direction of the Testator. The judgment relied on by the learned Single Judge in the impugned judgment, i.e., Kanwaljit Kaur (supra) holds that the deposition of the attesting witness in the said case had not deposed in accordance with Section 63(c) of the Act, where two persons had undoubtedly attested the Will, but the aspect of the 'direction of the testator' was absent from such deposition. In the considered view of this Court, the Learned Single Judge fell in error in arriving at such a finding for the words used in the Section, which already stands extracted earlier, read -"or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a...". That being the case, there is no reason why the 'or' employed therein, should be read as 'and'. After all, it is well settled that one should not read 'and' as 'or' or vice-versa unless one is obliged to do so by discernible legislative intent. Justice G.P Singh's treatise, 'Principles of Statutory Interpretation' tells us that the word "or" is normally disjunctive while the word "and" is normally conjunctive. Further, it is equally well settled as a proposition of law that the ordinary, grammatical meaning displayed by the words of the statute should be given effect to unless the same leads to ambiguity, uncertainty or absurdity. None of these requirements, to read a word is which is normally disjunctive, as conjunctive herein, are present.

14. In the present case the testimony of DW-1 is clear that he had seen the deceased affix his mark on the Will. That alone would ensure compliance of Section 63(c). The part of the Section that employs the term 'direction' would come into play only when the attestor to the Will would have to see some other person signing the Will. Such signing would explicitly have to be in the presence and upon the direction of the Testator.

15. The requirement of law while undoubtedly present, was not of concern in the instant dispute. On that count, we find the High Court to have erred in law. As such the impugned judgment of the High Court with the particulars as described in para 1 is set aside. The Judgment of the First Appellant Court stand restored. Consequently, the Will of Sanjhi Ram is valid and so are the subsequent Sale Deeds executed by Gopal Krishan.

Appeal is allowed in the aforesaid terms. Pending application(s) if any shall stand disposed of.

.....J. (C.T. RAVIKUMAR) .....J. (SANJAY KAROL) New Delhi;

January 2, 2025