

Brij Mohan Lal Arora And Ors. vs Girdhari Lal Manocha on 10 February, 1978

Equivalent citations: AIR1978SC1202, (1978)3SCC135, 1978(10)UJ146(SC), AIR 1978 SUPREME COURT 1202, 1978 3 SCC 135, 1978 ALL. L. J. 631, 1978 4 ALL LR 161, 1978 HINDULR 265

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Bench: N.L. Untwalia, P.S. Kailasam, R.S. Sarkaria

JUDGMENT

R.S. Sarkaria, J.

1. These appeals by special leave are directed against a judgment of the High Court of Allahabad. The dispute here centers round a Will dated 18.9.1960 executed by a widow, Smt. Chandi Rani, whereby she bequeathed all her moveable and immoveable property in favour of Girdhari Lal Manocha, respondent herein. The logatee-propounder is the grandson of the brother of the testatrix, which the appellants herein, who contest the factum and validity of the Will, are the sons of her husband's brother.

2. Reversing the finding of the Civil Judge, Faizab the High Court has held that the Will was duly executed by Smt. Chandi Rani and is valid.

3. Mr. Iyengar, appearing for the appellants, contends that there were a number of suspicious circumstances surrounding this Will, which had not been satisfactorily explained by its propounder. Such circumstances enumerated by the Counsel are:

(1) At the time of making the Will, the testatrix was virtually living in confinement under the control of the Respondent. She was not free to meet the appellants nor had the access to any independent advice.

(2) Smt. Chandi Rani must be in failing senses or coma at the time of the alleged execution of the Will because-

(a) she died the same day, a few hours of the alleged Will; and

(b) the Will bears her thumb-mark though she was proficient enough to write letters in Hindi and sign her name.

(3) The Will was not got registered on the very day of its execution, but on the 10th November 1960, about three weeks after the death of the testatrix.

(4) The Will is couched in general terms and is bereft of any recital as to the particular of the property held by the testatrix.

(5) There is no indication anywhere in the Will or in the evidence of the witnesses as to the precise time of its execution.

4. In connection with circumstance (1), counsel has taken as though some letters and other documents on record which are said to have been written or executed by Smt. Chandi Rani, deceased. Particular stress was placed on the letter, Ex. 10 dated 14.6.58 written by her to Brij Mohan Lal appellant. In this letter, she says: "Not a single day passes, when I do not shed tears for 2-4 times. I have corns here under great compulsion". She then urges Brij Mohan Lai to meet her at Allahabad, where she would go to attend the death anniversary of a near relation. She further warns the addressee: "People use to read letters here. Do not write anything secret". It is argued that this letter, apart from indicating that she was on very good terms with the appellant whom she regarded as a son, shows that this was very unhappy to live with the respondent as they were keeping her under a sort of surveillance and were making it difficult for her to act or write as she wished.

5. We do not think that it can be reasonably spelled out of the letter, Ex. 10, that she was virtually a prisoner in the hands of the Respondents and his brother. She was feeling distressed, because, firstly she was chronically ill and almost an invalid, and secondly, the death of a near relation and accentuated her anguish. Rather, her grievance was that the appellant had neglected her, but Murari and Girdhari had taken her to their place for treatment. The letter, Ex 10, read as a whole, amounts but to a piteous entreaty to the appellant, Brij Lal, not to maintain an indifferent attitude towards her, but to meet and help share her woes and worries. Throughout the chain of letters (exhibited in evidence) which Smt. Chandi Rani wrote to Mohan Lai from 1953 to 1959 run a pathetic note of regret that Brij Mohan Lal was not reciprocating the feeling of natural affection and tenderness which she as his aunt, had for him. She was repeatedly imploring Brij Mohan Lal to meet her and listen to her woes and fears. But Brij Mohan Lal appears to have paid scant heed to her distress calls. He rarely replied her letters. There is nothing to show that in response to her appeal in the letter, Ex. 10, dated 8.6.58 Brij Mohan Lai had met her at any time before her death on 18.9.60.

6. In contrast with the neglect shown by the appellants, Girdhari Lal Respondent has been taking care of her for 7 or 8 years preceding her death. No wonder, therefore, that out of sheer frustration of which she speaks in her letter., E. 14)., she turned her affections on Girdhari Lal to the exclusion of the indifferent Appellants.

7. Evidence on the record shows that she had come to repose full confidence in Girdhari Lal. He was looking after her accounts and Bank affairs. As early as 1957, she opened a joint Fixed Deposit Account in Punjab National Bank (vide Ex. A.6) in the name of Girdhari Lal and herself, payable to either or survivor. She enlarged this account by crediting more money in it, in 1958 vide Ex. A. 7), so that at the time of her death, there was Rs. 10,000/- in this Fixed Deposit Account payable to her or the

survivor (who was Girdhari Lal, respondent). In the context of the Bank Deposits of the deceased, it is evidence from Ex. A. 4, which is a document, dated 25.8.59 produced by the Appellants themselves, that all her money then lying deposited in Banks, had been given to her by her father and not by her husband. This being the case, she was naturally disposed to bequeath or give this money to her relations from her father's side in preference to the heirs of husband. Further assurance of her inclination to prefer Girdhari Lal for the bequest, is furnished by the circumstance (vide Ex. A8) that she had hired a Locker of Punjab National Bank, jointly with Girdhari Lal, in which she had kept currency notes, worth Rs. 1200/- and silver rupee-coins, worth Rs. 300/- on the 8th October, 1956.

8. As regards circumstances (2) it may be borne in mind that Smt. Chandi Rani was an old lady of 70 or so. As early as 21st February, 1956, in her letter, Ex. 14, she stated that her hand was, trembling and she felt great difficulty in writing. The High Court has noted that from her admitted signatures on EX. A 4, dated the 25th August, 1959 it is obvious that she had gone very weak and her hand trembled a good deal. Thirteen months thereafter, in her hand must have worsened and caused further physical deterioration, in her ability to execute a writing. This disability might have been further accentuated as a result of the loose motions she was passing since the 17th September, 1968.

9. There is however, evidence on the record that despite her incapacity to write or sign, she was at the time of executing the will on the 18th September, 1960 in sound mental condition, and capable of understanding what she was doing. This evidence is furnished by the statement of Girdhari Lal (Respondent), D.W. 3, Basdeo Singh, D.W. 1 an attesting witness of the who last attended on her on the 18th September, 1960. We have gone through their evidence with the assistance of Mr. Iyengar. In agreement with the High Court we find their evidence trustworthy. Dr. Kapoor testified that when he examined Chandi Rani at about 11 A.M. or noon on the 18th September, her 5.30 P.M. on the same day, Dr. Kapoor again examined her found that her condition was bad and serious.

10. These witnesses do not speak about the precise time of execution of the Will, because no pointed question in regard thereto was put to them even in cross-examination. But the attesting witness, D.W. 1 her signature because her hand was shaking and she could not sign.

11. Thus, it was very clearly established the time of executing the will, Ex. 1, in the morning of the 18th September, 1960, the testatrix was of sound disposing mind but was physically incapable of signing her name. These twin facts which stood firmly established, had completely dispelled circumstance (2). Circumstance (5), though insignificant, also stood greatly in way put the time of the execution of the will in the morning of the 18th September. Circumstances 3 and 4 have stated only to be rejected.

12. For the foregoing reasons, the appeals fail and are dismissed with costs.