Supreme Court of India
Smt. Sushila Devi vs Pandit Krishna Kumar Missir And ... on 8 February, 1971
Equivalent citations: AIR 1971 SC 2236, (1971) 3 SCC 146
Author: K Hegde
Bench: A Grover, K Hegde
JUDGMENT K.S. Hegde, J.

1. In this appeal by certificate the sole question that arises for decision is whether the will said to have been executed by Mahamahopadhya Shyamnarain Chaturvedi (who will be hereinafter referred to as the testator) on November 25, 1945 Is genuine. The testator died on February 26, 1946. Some of the beneficiaries under the will including the first respondent to this appeal sought to probate the said will before the court of District Judge, Saran. Before the learned District Judge, two questions arose for decision viz. (1) whether the will propounded is genuine and (2) whether the testator was in a sound and disposing state of mind at the time he is alleged to have executed the will. The trial court held that the will was not proved to be genuine. But as to the mental condition of the testator at about the time of the execution of the will, it rejected the contention of the objectors and came to the conclusion that he was in a sound disposing state of mind. The applicants took up the matter in appeal to the High Court of Patna. In the High Court the finding of the trial court that the testator was in a sound disposing state of mind at about the time of the execution of the will was not challenged by the contesting respondents. The only question that was put in issue before the High Court was as regards the genuineness of the will.

2. Now coming to the genuineness of the will propounded, it was not denied that the signature found on the said Will is that of the testator. The case put forward on behalf of the objectors was that one of the beneficiaries under the will namely Govindmani Tripathi who was living with the testator, used to take signatures of the deceased on blank papers for the purpose of certain litigations and the will put forward must have been written up in one of those papers.

3. The will was attested by as many as six persons, out of them four have been examined in court. The trial court did not accept the testimony of these witnesses. It further opined that the will is an unnatural will inasmuch as under that will no property was bequeathed to the appellant whereas substantial bequests have been made to Karala Prasadmani Tripathi, the first son-in-law of the deceased as well as to Govindmani Tripathi son of the aforesaid Kamla Prasadinani Tripathi. Some bequests have also been made in favour of some of the collaterals of the deceased but no bequest whatsoever was made to the appellant. The trial court concluded from that circumstance coupled with the circumstances that the will was written on an inferior type of paper, the writing of the will in some places is close and several of the witnesses who attested the will were chance witnesses that the genuineness of the will has not been satisfactorily proved. In appeal the High Court did not agree with the trial court that the evidence adduced in support of the execution of the will is not reliable. It opined that the witnesses who spoke to the execution of the will are respectable witnesses and that there are no reasons to disbelieve their testimony. It was unable to agree with the trial court that they were chance witnesses. It did not agree with the trial court that because the will was written on an inferior paper, its genuineness is open to doubt. It also disagreed with the trial court that writing of the will gave rise to any suspicion as regards its genuineness. While coming to the

aforementioned conclusions, it did bear in mind the fact that a court of appeal must be slow to upset a finding of fact reached by the trial court but yet it was of the opinion that the conclusions reached by the trial court were basically erroneous and further the learned trial Judge who decided the matter in the trial court did not have the benefit of seeing most of the witnesses examined in the case as they were examined before his predecessor. The High Court did attach significance to the circumstance that no bequest under the will had been made to the appellant though the testator loved her as much as his elder daughter Manorama. But on the basis of the evidence on record, it opined that the testator was treating Govindmani Tripathi as his Putrika Putra and in fact he was thinking of bequeathing all his properties to him. The High Court also relied on the evidence adduced in the case that the testator must have paid some cash to the appellant before the execution of the will and further he must have thought that there was no need to make any bequest in her favour as her husband, a Muktyar was reasonably well placed in life whereas his first son-in-law, Kamla Prasadmani Tripathi and his son Govindmani Tripathi were dependent on him for their livelihood.

4. It may be noted that the testator was a great scholar of Sanskrit and Hindi. He was well versed in Dharma Shastras and Vedas. He was also a leading Ayurveda Acharya and venerable citizen of the town of Chapra. During the first quarter of this century, he mainly resided in Patna city. He was intimately connected with the family of Rai Brij Raj Krishna, Chairman of the Bihar Legislative Council (A. W. 8). He was educated by that family and later on he was their family Vaid. That family appointed him as the Head Pandit of the Pathshala founded by them. They also gifted to him a house in the Patna city. He resided in that house till February, 1926, when he shifted to Chapra and settled down there. At Chapra he was first appointed as a Professor of Bharateshwari Marwari Sanskrit College and later on he became the Principal of that College and he continued to be such till his death on February 26, 1946. The testator had two children, both daughters. The first daughter was Manorama and the second one is the appellant. Manorama was married to Kamla Prasadmani Tripathi in about the year of 1914. Kamla Prasadmani Tripathi was not a rich person. He mostly lived at the testator's house in Patna. Govindmani Tripathi was bom in 1921. Thereafter his mother did not live for a long time. She died in about the year 1923. The case for the applicants is that just before her death she put the child in the hands of her father and mother and begged of them to take him as their child. Her parents agreed to do so. Thereafter Govindmani Tripathi was brought up by the testator and his wife. They performed his Upnayan ceremony and later got him married. Sometime after the death of Manorama. Kamla Prasadmani Tripathi married again but even after his second marriage he lived with the testator in Patna with his second . wife. The appellant was married in about the year 1919. Thereafter she was mostly living with her husband who was practising as a Muktyar in one of the towns in U. P. After the testator shifted from Patna to Chapra in 1926, Govindmani Tripathi and his wile went along with them. But Kamla Prasadmani Tripathi and his second wife continued to live in the Patna house belonging to the testator. The evidence is adduced to show and the recitals in the will support that evidence that Kamla Prasadmani Tripathi had spent over Rs. 2.000/-from out of his own pocket for repairing the Patna house. There is also evidence to show that the testator owed some money to Kamla Prasadmani Tripathi The testator was over 80 years when he died. In about September 1945, he was admitted to the hospital at Chapra for kidney trouble. He was in the hospital at the time he executed the will. After treatment he had recovered to some extent. Thereafter he left for his house and he died there on February 26,

1946. Under the will propounded, the testator has given the bulk of his property to his grand-son, Govindmani Tripathi. The Patna house along with some agricultural property has been bequeathed under it to Kamla Prasadmani Tripathi. Some small bequests have also been made to Devendra, Jagdev and Jai Dutt, the collaterals of the deceased.

5. Prima facie, the circumstance that no bequest was made to the appellant by the testator would make the will appear unnatural but if the execution of the will is satisfactorily proved, the fact that the testator had not bequeathed any property to one of Ms children cannot make the will invalid. If the bequest made in a will appears to be unnatural then the court has to scrutinise the evidence in support of the execution of the will with a greater degree of care than usual, because every person must be presumed to act in accordance with the normal human behavior but there is no gainsaying the fact that some individuals do behave in an abnormal manner. Judges cannot impose their own standard of behavior on those who execute wills. As observed by this Court in H. Venkatachala lyengar v. B.N. Thimmaiamma, that the mode of proving a will does not ordinarily differ from that of proving any other document except as to the special requirement of attestation prescribed by Section 63 of the Indian Succession Act. Proof in either case cannot be mathematically precise and certain and so the test should be one of satisfaction of a prudent mind in such matters. The onus must be on the propounder and in absence of suspicious circumstances surrounding the execution of the will, proof of testamentary capacity and signature of the testator as required by law may be sufficient to discharge the onus. Where, however, there are suspicious circumstances the onus would be on the propounder to explain them to the satisfaction of the court before the will can be accepted as genuine.

6. The first thing that we have to see is whether the evidence relating to the execution of the will is satisfactorily proved. The evidence on record discloses that a day or two earlier to the execution of the will, the testator who was in the Government hospital at Chapra requested his friend, Kamla Prasad (A. W. 5), a clerk in the Local Board Office who had called on him in the hospital to come to the hospital on Saturday following, telling him that he had some private work with him. Similarly he had asked the scribe of the will, a Tehsildar of a Zamindar to come there on that day. The evidence further discloses that some of the persons who had attested the will had come to the hospital to call on the testator and that they were asked to attest the will. The question for decision is whether the evidence of the scribe and the attesters can be relied on. One of the attesters of the will is Prof. H. K. Narain. At the relevant time he was the Professor and Head of Department of Commerce in Rajendra College. He was also a Fellow of the Patna University. He is not shown to be interested in any of the beneficiaries under the will Undoubtedly he was a friend of the testator. He used to visit the testator when he was in the hospital. It appears that several important persons were visiting the testator when he was in the hospital. The trial court refused to place faith on his testimony firstly on the ground that he had not been invited to attest the will, secondly that he was a chance witness and lastly that he was somewhat pompous at the time of giving evidence. The High Court, in our opinion, rightly declined to attach any importance to any of those circumstances.

7. Next we shall consider the evidence of Harihar Prasad Upadhaya (A. W. 2), who was previously a Prof. of English in the Patna Science College. At the material time he was a Prof. of English in the Rajendra College, Chapra. His evidence was rejected by the trial court His evidence is that he

happened to go to the hospital at about the time when the will was being executed. He saw the will being read out to the testator and further he was present when the testator signed the will. He did not attest the will. He left the place when the win was being attested, by others. He was not asked to attest the will The only ground on which the testimony of this witness was rejected by the trial court was that if he was present at the time of the execution of the will, he would have been asked to attest it The trial court overlooked the fact that as many as six persons had attested the will and therefore possibly the testator did not flunk ft necessary to ask this witness also to attest the will. There are no good reasons to reject the testimony of this witness. We now come to the evidence of (A. W. 4) Shiva Shankar Hoy. He has attested the will. At the material time he was the auditor of a Cooperative Society at Chapra. He had happened to go to the hospital on the day in question. There he was asked to attest the will. The ground on which the trial court rejected the testimony of this witness is that the father-in-law of Govindamani Tripathi was also an officer working in Cooperative department and hence the witness should be considered as being interested. The High Court rightly thought that merely because the father-in-law of Govindmani Tripathi and the attestor belonged to the same department, the trial court should not have come to the conclusion that the witness had attested a forged will.

8. Next we may refer to the evidence of Kamla Prasad, a clerk in the Local Board Office. He was a friend of the testator from a long time. According to him he used to call on the testator now and then when he was in the hospital. Two days prior to the execution of the will the testator asked him to come over to the hospital on the following Saturday as lie had some private work with him. That is how he happened to go to the hospital on the day in question. He also appears to be a completely disinterested witness. No good reasons have been given by the trial court for rejecting his testimony. Then there is the evidence of Sachida Nand Prasad (A. W. 6), Head Master, Rajendra Collegiate School. He is also an attestor to the will. There is no reason to reject his testimony.

9. The scribe of the will who is also examined in this case is not a professional writer but he is a Tehsildar of a Zamindar. He was well known to the testator. The deceased had called him to write the will. The witnesses referred to above are independent and respectable witnesses. There are no good reasons to reject their testimony.

10. In addition to the evidence referred to earlier, we must refer to the evidence of two other persons viz. Srikrishnadev Prasad (A. W. 7), a leading advocate of Patna and Rai Brij Raj Krishna (A. W. 8), to whom we have already made reference. According to Srikrishnadeva Prasad, the testator consulted him about making a will in about the year 1935 and under his instructions he prepared a draft of a will for him. According to him the will propounded ,is more or less in line with the draft prepared by him. He spoke to the fact that even under the draft prepared by him, no bequest was made in favour of the appellant. It is not known whether the testator had made any will in pursuance of the draft given by Krishnadeva Prasad but from his evidence it is clear that even as far back as 1935, the testator was not intending to bequeath any property to his second daughter. His evidence further discloses that the testator was thinking that because he had performed the Upanayan of Govindmani Tripathi, got him married and is looking after him, Govindmani Tripathi in law had become his Putrika Putra and thus entitled to his properties. But the witness advised him that that is not the position in law; if he wanted that Govindmani Tripathi should succeed to his

properties, he must execute a will and it is on the basis of that advice the testator asked the witness to prepare the draft of a will. This witness is a highly respectable person. There is no reason to disbelieve him.

11. The evidence of Rai Brij Raj Krishna has also considerable significance. Undoubtedly he is a very respectable person. By profession he is an advocate. As mentioned earlier, his family was the patron of the testator. The witness appears to have been a personal friend of the testator. According to the witness sometime prior to his death the testator discussed with him about making a will. He told him that he is desirous of bequeathing all his properties to Govindmani Tripathi as he considered him as his adopted son. The witness advised him that he should bequeath some property to his second daughter also. But then the testator told him that he had given her some money and he proposed to give her some more money. But he would not be giving her any immovable property. This evidence, which is clearly acceptable goes to prove that the bequest made by the testator cannot be considered as unnatural.

12. For the reasons mentioned above this appeal fails and the same is dismissed. But in the circumstances of the case we make no order as to costs. The appellant who was permitted to prosecute the appeal as pauper shall pay the required court-fee.