RAMABAI PADMAKAR PATIL (D) THROUGH LRS. AND ORS. A

v.

RUKMINIBAI VISHNU VEKHANDE AND ORS.

AUGUST 14, 2003

[Y.K. SABHARWAL AND G.P. MATHUR, JJ.] B

Hindu Succession Act, 1957; Ss. 63 and 68:

Testamentary disposition of the property by a widow/mother in favour of her widowed daughter excluding other heirs—Declaratory suit filed by the C *daughter—Court decreed the suit—Reversed by the first appellate Court—Affirmed by the High Court—On appeal, Held, widowed daughter was living and looking after the testator for quite a long period—Execution of Will in her favour was most natural and probable conduct of a mother—Since a Will is executed to alter the mode of succession, reducing/depriving the share of* D *heirs by the testator could not be made a ground to cast doubts on the authenticity of the Will—Mere examination of one of the attesting witnesses would prove the authenticity of the Will—Since no infirmity was found in the testimony of the witnesses, Trial Court rightly held the Will as genuine—However, since husband of the testator died after coming into force of the Act, she was entitled to 1/8th share in the estate—Hence the appellant, in addition* E *to her own share in the estate, would also get her mother's 1/8th share.*

Mother of the appellant inherited the property in dispute after her husband's death. She executed a registered Will and bequeathed the entire property to her widowed daughter, who was residing with her for quite a long F **period. Other heirs/daughters started interfering with the possession of the suit property. Appellant filed a declaratory suit. Trial Court decreed the suit. Aggrieved, other heirs filed an appeal which was allowed by the first appellate court and in the second appeal affirmed by the High Court. Hence the present appeal.**

G

Appellant contended that after the death of her father on 6.6.1956, her mother became the exclusive owner of the estate property; that the first appellate Court and later the High Court erred in discarding the Will merely on the ground that the entire property was given to her by her mother/testator excluding other daughters/heirs; that the conduct of her mother in executing

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A the Will bequeathing entire property in her favour was most probable and natural; and that the testator at the time of execution of the Will was in proper and fit mental state.

On behalf of the respondents, it was submitted that the mother of the appellant had not become exclusive owner of the property after the death of B her husband as succession would be governed by the Hindu Succession Act and thus appellant could not become owner of the entire property.

Partly allowing the appeal, the Court

HELD: 1.1. There is nothing more shocking for the parents than the C death of a grown-up son or a young daughter becoming widow. It is most natural for the parents to have the greatest amount of sympathy for their widowed daughter. The respondents have led no evidence to show that the widowed daughter was getting anything for her sustenance from the family members of her late husband. She was thus entirely dependent upon her own parents. D Her father died on 6.6.1956 though according to the respondents he died sometime in the year 1957. At any rate at least from 1957 till death of the testator, she was being looked after by the appellant. The respondents, other daughters/heirs were residing at different places with their husbands. In such circumstances, the execution of the Will by the mother in favour of her widowed daughter, the appellant, who was living with her for over 20 years E and was looking after her, appears to be most natural and probable.

[589-F, G, H; 590-A]

1.2. The fact that the testator excluded all other daughters and gave the entire property to the appellant could not be a ground to cast any doubt regarding the authenticity of the Will in the facts and circumstances of the F case. It is not a case of exclusion of a son who may have been living with the parents or looking after them. It is a case of making provision for a widowed daughter who had been left a destitute on account of death of her husband at a very early age. If the parental property was to be divided equally amongst all the seven sisters, the share inherited by the appellant would have been quite G small making it difficult for her to survive. [590-B, C, D]

1.3. A Will is executed to alter the mode of succession and by the very nature of things it is bound to result in either reducing or depriving the share of a natural heir. If a person intends his property to pass to his natural heirs, there is no necessity at all of executing a Will. It is true that a propounder of H the Will has to remove all suspicious circumstances. Suspicion means doubt,

conjecture or mistrust. But the facts that natural heirs have either been excluded or a lesser share has been given to them, by itself without anything more, cannot be held to be a suspicious circumstance especially in a case where the bequest has been made in favour of an off spring. [590-E, F] A

Shashi Kumar Banerjee and Ors. v. *Subodh Kumar Banerjee and Ors.*, AIR (1964) SC 529, followed. B

PPK Gopalan Nambiar v. *PPK Balakrishnan Nambiar and Ors.*, AIR (1995) SC 1852; *Pushpavati and Ors.* v. *Chandraja Kadamba and Ors.*, AIR (1972) SC 2492 and *Rabindra Nath Mukherjee and Anr.* v. *Panchanan Banerjee (dead) by LRs. and Ors.*, [1995] 4 SCC 459, relied on. C

H. Venkatachala Iyengar v. *B.N. Thimmajamma and Ors.*, AIR (1959) SC 443 and *Rani Purnima Debi and Anr.* v. *Kumar Khagendra Narayan Deb and Anr.*, AIR (1962) SC 567, referred to.

1.4. No infirmity of any kind had been found in the testimony of the witness. The typist merely typed the Will and she was not attesting witness nor the appellant had put her thumb impression on the Will in her presence, therefore, her examination as a witness was wholly redundant. The mere non-examination of the Advocate who was present at the time of preparation or registration of the Will cannot, by itself, be a ground to discard the same. The fact that the testator was hard of hearing or that she was unable to walk does not lead to an inference that her mental faculties had been impaired or that she did not understand the contents of the document which she was executing. It is important to note that the testator personally came to the office of the Sub-Registrar and her death took place after a considerable period. No evidence has been adduced by the respondents to show that at the time of the execution of the Will she had been suffering from any such ailment which had impaired her mental faculties to such an extent that she was unable to understand the real nature of the document which she was executing. Thus, the finding recorded by the District Judge, which has been affirmed by the High Court in second appeal, is not based upon a correct application of legal principles governing the proof and acceptance of Will and the same is completely perverse. Hence, the finding recorded by the trial Court that the Will is genuine, is restored. [591-E-H; 592-A] D E F G

2. The finding recorded by the District Judge to the effect that the husband of the testator died sometime after enforcement of Hindu Succession Act is based upon a correct and proper appraisal of evidence and no exception H

can be taken to the same. The testator would have only 1/8th share in the estate left by her husband which alone would go to the appellant on the basis of the Will executed in her favour in addition to her own share. The decree passed by the Trial Court is modified accordingly. [592-D, E, F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 15697 of 1996.

From the Judgment and Order dated 27.4.1995 of the Bombay High Court in S.A. No. 147 of 1994.

V.A. Mohta, Dr. Meera Agarwal and R.C. Mishra for the Appellants.

A.S. Bhasme for the Respondents

The Judgment of the Court was delivered by

G.P. MATHUR, J. 1. This appeal by special leave has been preferred by the plaintiff against the judgment and decree dated 27.4.1995 of High Court of Bombay by which the second appeal preferred by her was dismissed and the judgment and decree dated 7.4.1993 passed by the District Judge, Thane was affirmed.

2. The appellant Smt. Ramabai filed a suit for a declaration that she had become owner and occupant of the suit property as per the Will dated 5.4.1976 and for injunction for restraining the defendants and their agents, etc. from interfering with her peaceful possession over the aforesaid property. The defendant nos. 1 to 5 are the real sisters of the plaintiff and defendant nos. 6 to 8 are the children of a deceased sister of the plaintiff, namely, Smt. Gajarubai. The suit was filed on the ground that the property in dispute, which is a house and agricultural land, belonged to Madhav who was father of the plaintiff and defendant nos. 1 to 5 and after his death, the same was inherited by their mother Smt. Yamunabai and she became the owner thereof. Smt. Yamunabai executed a registered Will by which she bequeathed the entire property to the plaintiff. Smt. Yamunabai died on 11.1.1980 and thereafter the plaintiff came in possession over the property in dispute. However, the defendants got the names of all the heirs of Madhav mutated over the property in dispute and thereafter started interfering with the plaintiff's possession thereof. The suit was accordingly filed claiming a decree of declaration and injunction. The defendant nos. 1 to 5 contested the suit on the ground, *inter alia*, that the property in dispute was ancestral property in the hands of Madhav and after his death Smt. Yamunabai did not become the

exclusive owner thererof : that the tenancy rights were inherited by all the heirs of Madhav by succession : that the house was built by father of Madhav and it being ancestral in nature, the same was inherited by all the heirs; that Madhav died in the year 1957 and, thereof, the succession would be governed by Hindu Succession Act and that Smt. Yamunabai did not execute any Will in favour of the plaintiff on 5.4.1976 and the same was not binding upon the defendants. It was specifically pleaded that the share of the plaintiff was only 1/7 and, thereof, no decree for injunction could be passed against the defendants.

3. The parties adduced oral and documentary evidence in support of their case. The learned Civil Judge (Jr. Divn.), Palghar, decreed the suit on 4.2.1988 declaring that the plaintiff had become exclusive owner of the property in dispute on the basis of the Will dated 5.4.1976. He further passed a decree for injunction restraining the defendants from causing any interference in the possession of the plaintiff over the property in dispute. Feeling aggrieved by the aforesaid judgment and decree defendant nos. 1 to 5 preferred an appeal before the District Judge, Thane, who allowed the same by the judgment and decree dated 7.4.1993 and dismissed the suit. The plaintiff preferred a second appeal which was dismissed by the High Court on 27.4.1995 and the decree passed by the learned District Judge dismissing the suit was affirmed.

4. Shri V.A. Mohta, learned senior counsel for the appellant has submitted that after the death of Madhav which took place 6.6.1956, his widow Smt. Yamunabai had become the exclusive owner of entire property. The plaintiff- appellant had become a widow in the lifetime of her parents and was residing with then. It was for this reason that Smt. Yamunabai had executed a Will in favour of the plaintiff and the same was got registered. Learned counsel has further submitted that the learned District Judge and also the High Court have taken a completely perverse view in discarding the Will solely on the ground that Smt. Yamunabai had excluded her other daughters and had given the entire property to the plaintiff. It has been urged that in the facts and circumstances of the case, the conduct of Smt. Yamunabai was most natural and no doubt could be raised regarding the authenticity of the Will merely on the ground that no provision was made for the remaining daughters. It has also been urged that the Will was executed and was registered on 5.4.1976 whilst Smt. Yamunabai died after considerable period on 11.1.1980, which itself showed that the same was executed when she was in proper and fit mental state and it had not been obtained by putting any undue influence. Shri A.S Bhasme, learned counsel for the respondents has on the other hand,

A submitted that the mother had equal love and affection for all her children and there was no material on record to show that Smt. Yamunabai was in any manner displeased or unhappy with her other daughters and as such she would not have completely disinherited them and this feature rendered the alleged execution of Will by her as highly suspicious and unnatural. He has further submitted that the learned District Judge and the High Court had B given good reasons for discarding the Will and the findings recorded by them being based upon proper appraisal of evidence, should not be interfered with by this Court Learned counsel has also urged that Smt. Yamunabai had not become exclusive owner of the property after the death of Madhav as the succession would be governed by Hindu Succession Act and consequently C even if the Will was accepted, the plaintiff would not become owner of the entire property.

5. Before we advert to the submissions made by learned counsel for the parties, it will be useful to briefly notice the legal position regarding acceptance and proof of a Will. Section 63 of Indian Succession Act deals D with execution of unprivileged Wills. It lays down that 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. It further lays down that the Will shall be attested by two or more witnesses, each of whom has seen the testator signing or affixing his mark to the Will or has seen some other person sign E the Will, in the presence and by the direction of the testator and each of the witness shall sign the Will in the presence of the testator. Section 68 of the Evidence Act mandates examination of one attesting witness in proof of a Will, whether registered or not. The law relating to the manner and onus of proof and also the duty cast upon the Court while dealing with a case based upon a Will has been examined in considerable detail in several decisions of F this Court viz. *H. Venkatachala Iyengar* v. *B.N. Thimmajamma and Ors.*, AIR (1959) SC 443, *Rani Purinima Debi and Anr.* v. *Kumar Khagendra Narayan Deb and Anr.* AIR (1962) SC 567 and *Shashi Kumar Banerjee and Ors.* v. *Subodh Kumar Banerjee and Ors.*, AIR (1964) SC 529. It will be useful to reproduce the relevant part of the observations made by this Court in the G Constitution Bench decision in *Shashi Kumar Benerjee* (supra) which are as under :

> "The mode of proving a Will does not ordinary differ from that of proving any other document except as to the special requirement of attestation prescribed in the case of a will by Section 63, Succession H Act. The onus of proving the will is on the propounder and in the

absence of suspicious circumstances surrounding the execution of the will, proof of testamentary capacity and the signature of the testator as required by law is sufficient to discharge the onus. Where however there are suspicious circumstances, the onus is on the propounder to explain them to the satisfaction of the court before the court accepts the will as genuine. Where the caveator alleges undue influence, fraud and coercion, the onus is on him to prove the same. Even where there are no such pleas but the circumstances give rise to doubts, it is for the propounder to satisfy the conscience of the court. The suspicious circumstances may be as to the genuineness of the signature of the testator, the condition of the testator's mind, the dispositions made in the will being unnatural, improbable or unfair in the light of relevant circumstances or there might be other indications in the will to show that the testator's mind was not free. In such a case the court would naturally expect that all legitimate suspicion should be completely removed before the document is accepted as the last will of the testator. If the propounder himself takes part in the execution of the will which confers a substantial benefit on him that is also a circumstance to be taken into account, and the propounder is required to remove the doubts by clear and satisfactory evidence. If the propounder succeeds in removing the suspicious circumstances the court would grant probate, even if the will might by unnatural and might cut off wholly or in part near relations.

6. The relevant facts may now be examined. It is not in dispute that Smt. Yamunabai had no son but had 7 daughters. The plaintiff-appellant Smt. Ramabai become a widow at a very young age during the lifetime of her father. Since then, she was living with her parents and not at the place of her husband or in-laws. It has come in evidence that she was looking after her mother for more than 20 years. The other daughters of Smt. Yamunabai are living with their husbands at their respective places. Smt. Yamunabai had gone to the office of Sub-Registrar, Palghar on 5.4.1976 for the purposes of registration of the will and she died 3 years and 9 months thereafter on 11.1.1980. The Will was attested by two persons, namely, PW2 Rughunath Govind Sogale and Shaikh, out of whom the former was examined as a witness in Court. There is no dispute regarding these facts. There is nothing more shocking for the parents than the death of a grown-up son or a young daughter becoming widow. It is most natural for the parents to have the greatest amount of sympathy for their widowed daughter. The defendants have led no evidence to show that Smt. Ramabai was getting anything for her

A sustenance from the family members of her late husband. She was thus entirely dependent upon her own parents. According to Smt. Ramabai, her father Madhav died on 6.6.1956 though according to the defendants he died sometime in year 1957. At any rate at least from 1957 till her death, the mother Smt. Yamunabai was being looked after by the plaintiff Smt. Ramabai. The defendants who are the other daughter of Smt. Yamunabai, are residing at
B different places with their husband. In such circumstances the execution of the Will by Smt. Yamunabai in favour of her widowed daughter Smt. Ramabai, who was living with her for over 20 years and was looking after her, appears to be most natural and probable.

C 7. The main reason which weighed with the learned District Judge in discarding the Will, which has also appealed to the High Court, is that Smt. Yamunabai completely disinherited her other daughter and gave the entire property to Smt. Ramabai. In our opinion, the fact that Smt. Yanumabai excluded all other daughter and gave the entire property to the plaintiff Smt. Ramabai could not be a ground to cast any doubt regarding the authenticity
D of the Will in the facts and circumstances of the case in hand. It is not a case of exclusion of a son who may have been living with the parents or looking after them. It is a case of making provision for a widowed daughter who had been left a destitute on account of death of her husband at a very early age. If the parental property was to be divided equally amongst all the seven
E sisters, the share inherited by Smt. Ramabai would have been quite small making it difficult for her to survive. The house is situate in a village and is not in a big town or city where it may have any substantial value. In fact, if the background in which the Will was executed is examined carefully, it would be apparent that this was the most natural conduct of the mother and giving of equal shares to all the daughters would have entailed a serious
F hardship to the plaintiff Smt. Ramabai.

8. A Will is executed to alter the mode of succession and by the very nature of things it is bound to result in either reducing or depriving the share of a natural heir. If a person intends his property to pass to his natural heirs, there is no necessity at all of executing a Will. It is true that a propounder
G if the Will has to remove all suspicious circumstances. Suspicion means doubt, conjecture or mistrust. But the fact that natural heirs have either been excluded or a lesser share has been given to them, by itself without anything more, cannot be held to be suspicious circumstance especially in a case where the request has been made in favour of an offspring. In *PPK Gopalan*
H *Nambiar* v. *PPK Balakrishan Manbiar and Ors.,* AIR (1995) SC 1852 it has

been held that it is the duty of the propounder of the Will to remove all the suspected features, but there must be real, germane and valid suspicious features and not fantasy of the doubting mind. In this case, the fact that the whole estate was given to the son under the Will depriving two daughters was held to be not a suspicious circumstance and the finding to the contrary recorded by the District Court and the High Court was reversed. In *Pushpavati and Ors.* v. *Chandraja Kadanba and Ors.*, AIR (1972) SC 2492, it has been held that if the propounder succeeds in removing the suspicious circumstance, the Court would have to give effect to the Will, even if the Will might be unnatural in the sense that it has cut off wholly or in part near relations. In *Rabindra Nath Mukherjee and Anr.* v. *Panchanan Banerjee (dead) by LRs. and Ors.*, [1950] 4 SCC 459, it was observed that the circumstance of deprivation of natural heirs should not raise any suspicion because the whole idea behind execution of the Will is to interfere with the normal line of succession in and so, natural heirs would be debarred in every case of Will. Of course, it may be that in some cases they are fully debarred and in some cases partly. The concurrent finding recorded by the District Court and the High Court for doubting the genuineness of the Will on the aforesaid ground was reversed.

9. The learned District Judge has observed that Smt. Yamunabai was very old when she executed the Will and she was hard of hearing and was unable to walk. He further observed that Chhaya Dighe who typed the Will and one Shri Tiwari, Advocate, who was present at the time of preparation and execution of the Will, were not examined and these facts together created a doubt regarding the authenticity of the Will. As discussed earlier, in view of Section 63 of Indian Succession Act the proviso to Section 68 of the Evidence Act, the requirement of law would be fully satisfied if only one of the attesting witness is examined to prove the Will. That this had been done in the present case by examining PW2 Raghunath Govind Sogale cannot be disputed. No infirmity of any kind had been found in the testimony of this witness. Chhaya Dighe merely typed the Will and she is not an attesting witness nor it is anybody's case that Smt. Yamunabai had put her thumb impression on the Will in her presence, therefore, her examination as a witness was wholly redundant. The mere non examination of the Advocate who was present at the time of preparation or registration of the Will cannot, by itself, be a ground to discard the same. The fact that Smt. Yamunabai was hard of hearing or that she was unable to walk does not lead to an inference that her mental faculties had been impaired or that she did not understand the contents of the document which she was executing. It is important to note that Smt.

A Yamunabai personally came to the office of the Sub-Registrar and her death took place after a considerable period i.e. 3 years and 9 months after the execution of the Will. No evidence has been adduced by the defendants to show that at the time of the execution of the Will she had been suffering from any such ailment which had impaired her mental faculties to such an extent that she was unable to understand the real nature of the document which she B was executing. We are, therefore, clearly of the opinion that the finding recorded by the learned District Judge, which has been affirmed by the High Court in second appeal, is not based upon a correct application of legal principles governing the proof and acceptance of Will and the same is completely perverse. The aforesaid finding is accordingly set aside. The C finding recorded by the trial Court that Will is genuine is hereby restored.

10. The next question which requires consideration is whether the plaintiff-appellant would become the owner of the entire property which belonged to Madhav. The learned Civil Judge (Jr. Divn.) has held that as Madhav died on 6.6.1956, Smt. Yamunabai after coming into force of Hindu D Succession Act became owner of entire property. The learned District Judge has reversed this finding and has held that Madhav died sometime in the year 1957 i.e. after 17.6.1956 when Hindu Succession Act had come into force and consequently Smt. Yamunabai and all her daughters would get equal share in the property. The High Court did not go into this question at all and dismissed the second appeal after expressing agreement with the finding of the learned E District Judge regarding the character of the Will. We have carefully perused the judgment of the trial Court and also of the first appellate Court on this point and we are of the opinion that the finding recorded by the learned District Judge to the effect that Madhav died sometime after enforcement of Hindu Succession Act is based upon a correct and proper appraisal of F evidence and no exception can be taken to the same. In this view of the matter, Smt. Yamunabai will have only 1/8th share in the estate left by Madhav which alone would go to the plaintiff on the basis of the Will executed in her favour.

11. In the result, the appeal is allowed and the judgment and decree G passed by the District Judge and also by the High Court are set aside. The decree passed by the learned Civil Judge (Jr. Divn.) is modified and it is declared to the plaintiff-appellant, in addition to her own share, will also be entitled to the 1/8th share of her mother Smt. Yamunabai on the basis of the Will executed in her favour. No costs.

H S.K.S. Appeal allowed.