

PETITIONER:
RABINDRA NATH MUKHERJEE & ANR.

Vs.

RESPONDENT:
PANCHANAN BANERJEE (DEAD) BY LRS. & ORS.

DATE OF JUDGMENT 09/05/1995

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
HANSARIA B.L. (J)

CITATION:
1995 AIR 1684 1995 SCC (4) 459
JT 1995 (7) 177 1995 SCALE (3) 455

ACT:

HEADNOTE:

JUDGMENT:
THE 9TH DAY OF MAY, 1995

Present:
Hon'ble Mr. Justice K. Ramaswamy
Hon'ble Mr. Justice B.L. Hansaria
Mr. G.L. Sanghi, Sr. Adv. Ms. Lily Thomas, Adv. with him for
the appellants.
Mr. Shankar Ghosh, Sr. Adv. Mr. Praveen Kumar, and Mr.
Virender Kaushal, Adv. with him for the Respondents.

JUDGMENT

The following Judgment of the Court was delivered:

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 5384 OF 1995

(Arising out of SLP(C) No. 5456 of 1992)

Rabindra Nath Mukherjee
& Anr.

...Appellants

Vs.
Panchanan Banerjee (dead)
by LRs. & Ors.

...Respondents

JUDGMENT

HANSARIA, J.

A will contains the last desire of testator/testatrix. The courts, therefore, normally act in accordance with the wishes of the person concerned. But then, if the courts were to doubt either genuineness or voluntariness of the maker of the will, they would be loathe to work in accordance with what has been stated in the will. To put it differently, if the will is surrounded by suspicious circumstances, the removal of which is the burden of the propounder, the will would not be probated.

2. In the appeal at hand, we are concerned with a will said to have been made by one Saroj Bala on 30.11.66. This was followed by two codicils dated 2.2.68 and 21.11.69. Saroj Bala passed away on 13.1.71 at the age of 90. On the petitioners, who were named as executors in the will,

approaching the Court of Addl. District Judge, Alipore, for obtaining probate of the will, read with the codicils, the same was refused, as the learned trial Judge felt that these were surrounded by suspicious circumstances. On appeal being preferred, the High Court at Calcutta also took the same view. Hence this appeal by special leave.

3. A perusal of the two impugned judgments shows that the following were regarded as suspicious circumstances:

- (1) Deprivation of the natural heirs by the testatrix.
- (2) Identification of the testatrix before the Sub-registrar by an Advocate of Calcutta who had acted as a lawyer of one of the executors in some cases.
- (3) The witnesses to the documents were interest in the appellants.
- (4) Active part played by one Subodh, a close relation of Rabindra, one of the executors, in getting execution of the will. He has been described as ubiquitous.

4. As to the first circumstance, we would observe that this should not raise any suspicion, because the whole idea behind execution of will is to interfere with the normal line of succession. 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 others only partially. As in the present case, the two executors are sons of a half-blood brother of Saroj Bala, whereas the objectors descendants of a full blood sister, the disinheritance of latter could not have been taken as a suspicious circumstance, when some of her descendants are even beneficiaries under the will.

5. As to the identification by a lawyer of Calcutta, it may be stated that this could have been regarded as a suspicious circumstance if a wrong person would have been identified as Saroj Bala. That, however, is not the case of the objection. So, there is no bane in this circumstance.

6. Insofar as the third circumstance is concerned, we may first observe that witnesses in such documents verify whether the same had been executed voluntarily by the concerned person knowing its contents. In case where a will is registered and the Sub-registrar certifies that the same had been read over to the executor who, on doing so, admitted the contents, the fact that the witnesses to the document are interested loses significance. The documents at hand were registered and it is on record that the Sub-registrar had explained the contents to the old lady. So, we do not find the third circumstance as suspicious on the facts of the present case.

7. As to "ubiquitous" Subodh, it may be said that somebody has to take necessary steps in such matters; but if he happens to be one close to the executor, some eye-brow is bound to arise. Even so, if there be other circumstances on record to show the voluntary character of the document, the eye-brows should get dropped down. And such circumstances were present in the case, which somehow missed the two courts below. These are:

- (1) Making of two codicils by Saroj Bala, last of which was about three years after the execution of will. The need for these arose because the testatrix had made use some of the properties listed in the will. So, the testatrix knew what was the will for and why it needed change.
- (2) The testatrix executed an FDR of Rs.15,000/- on 2.8.67, which shows that she was not so immobile or senile as sought to be made out by the respondents. The fact that her signature in the FDR was shaky has no cutting edge, because nearing 90 at the relevant time, the signature could have well been shaky because of old age.
- (3) Testatrix sold some property in February 67 and received

the sale price, which shows her consciousness as to how to deal with her properties.

8. If a total view is taken of the aforesaid circumstances, which has to be the approach, we are of the opinion that the courts below over played some circumstances which they regarded as suspicious and somehow missed some circumstances which bolstered the case of the propounders.

9. The appeal is, therefore, allowed and the impugned judgments are set aside. The result is that the will, as modified by the two codicils, stands probated. In the facts and circumstances of the case, we leave the parties to bear their own costs throughout.

JUDIS