

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil)...../2013  
CC 9750/2013

(From the judgement and order dated 09/11/2012 in FA No.686/1982, of The  
HIGH COURT OF JUDICATURE AT ALLAHABAD)

SUKHDEV PRASAD & ANR. Petitioner(s)

VERSUS

DECD. PRAYAG NATH TH. LEGAL HAIRS AYODHY Respondent(s)

(With appln(s) for c/delay in filing SLP,exemption from filing O.T.,c/delay  
in refiling SLP,permission to file additional documents

Date: 07/05/2013 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI  
HON'BLE MRS. JUSTICE RANJANA PRAKASH DESAI

For Petitioner(s) Mr. Fakuruddin, Sr. Adv.  
Mr. Haresh Raichura, Adv.  
Mr. Rajat Vats, Adv.

For Respondent(s)

UPON hearing counsel the Court made the following  
O R D E R

Delay condoned.

The petitioners are aggrieved by the judgment of the  
learned Single Judge of the Allahabad High Court, who dismissed the  
appeal filed against the judgment of the 1st Additional District  
Judge, Mathura and upheld the dismissal of the petition filed under  
Section 299 of the Indian Succession Act.

We have heard learned counsel for the petitioners and  
perused the record.

The petitioners' case was founded on Will dated 15.1.1973  
allegedly executed by Rishi Kesh Chaubey whose daughter Godawari was  
married to Hardev. The petitioners claimed that Rishi Kesh Chaubey  
had executed Will in his favour out of love and affection.

The respondents contested the suit by alleging that the  
Will was a fabricated document and Hardev got the same executed by  
taking advantage of his fiduciary relationship with Rishi Kesh  
Chaubey.

On the pleadings of the parties, the trial Court framed the  
following issues:

"1. Whether deceased Rishi Ram Chaubey alias Rishi Kesh Chaubey  
validly executed a Will dated 15-1-73 in favour of the  
applicants?

2. To what relief, if any, are the applicants entitled?  
He was also pleased to frame an additional issue on 3.11.1979.

3. Whether the suit has been undervalued and whether the court fee paid is insufficient?"

After considering the evidence produced by the parties, the trial Court dismissed the petition. Among other things, the trial Court held that the execution of the Will was highly suspect.

The learned Single Judge independently analysed the evidence and recorded his concurrence with the trial Court by making the following observations:

"The contention of the appellant is that the testator died on 17th of July, 1973 and the factum of the Will in question was disclosed by the petitioners through the legal notice dated 13th of August, 1973 vide paper no.73 Ka. There appears to be no dispute between the parties with regard to the said paper no.73 Ka. This is one thing to say that the existence of the Will was disclosed through the notice dated 13th of August, 1973 but the fact remains that the copy of the Will in question was not made available to the respondents herein in spite of their request through the notice dated 20.8.1973 given in reply and reminder/notice dated 5th September, 1973. There is no plausible explanation for not providing a copy of the Will or showing it to the respondents on demand; what was the hitch or reason -- no explanation is there. The matter was not pursued any further by the petitioners. It was not followed by any overt act by them. They kept quiet for a considerable period of time of about five years and filed the present petition on 19th of May, 1978. The failure to show the contents of the Will in dispute weighs heavily against the appellants and gives rise to a presumption that no such Will dated 15.1.1973 was in existence even on the date of their notice dated 13th August, 1973. Had it been in existence there would have been no difficulty in providing its copy to the respondents on their asking. It is an acknowledged legal position that the existence of the Will should be disclosed at the earliest immediately after the death of the testator, specially to such persons who would otherwise inherit the properties of the deceased. There being no satisfactory explanation, the Court below was justified in drawing an adverse inference against the execution and attestation of the Will in question by the testator. The argument of the appellant's counsel that the existence of the Will was disclosed shortly after the death of the testator on the facts of the present case lacks merit and is hereby rejected.

Perused a copy of the Will dated 15.1.1973 which is in dispute. The said Will is a simple Will and it contains only four clauses. It recites that the testator had earlier executed a Will in favour of Hardev Prasad who has unfortunately expired and this necessitated him to execute another Will as the circumstances after execution of the first Will have changed causing the necessity to execute a fresh Will. Even from naked eyes it can be seen that the spacing in between the last five lines towards the bottom of the document is less and they are closely typed in comparison to the rest of lines. Consciously, the matter was squeezed on single page. It is indicative of the fact that the Will was manufactured on a single blank but signed paper. When it was found that the matter is not going to be completed on one page, the spacing between the lines were reduced. Mathura Prasad PW/2, the scribe of the Will in question, typist by profession, was put to cross examination on the above aspect of the case. He admits that the spacings in between few lines towards the bottom of the Will is less. He tried to explain it by saying that the person who had called him and taken to the residence of Rishikesh had instructed that the entire draft matter should be typed out on only one side of this paper. Consequently, the distance between the lines towards the

bottom of the document was reduced. Although he denied the suggestion that the document was already containing signature but the circumstances do indicate that no reliance can be placed on the said denial. There appears to be no reason or problem for getting the rest of the matter typed out on the next page if the executor of the alleged Will had been present there. An inference can safely be drawn that the petitioners had only one signed blank paper in their possession. Attempt was made to type out the entire Will on the said signed page purporting to be the Will of Rishikesh."

In our view, the concurrent finding recorded by the trial Court and the High Court that the Will executed by Rishi Kesh Chaubey was not genuine is based on correct analysis of the pleadings of the parties and the evidence produced by them and the judgment under challenge does not call for interference under Article 136 of the Constitution.

The special leave petition is, accordingly, dismissed.

| (Parveen Kr. Chawla)  
| Court Master  
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| | (Phoolan Wati Arora)  
| | Court Master  
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