
(2008) 05 DEL CK 0150

Delhi High Court

Case No: Test. Cas. 1 of 2001

Dr. Pritam Dhir

APPELLANT

Vs

Sulochana Malhotra

RESPONDENT

Date of Decision: May 15, 2008

Acts Referred:

Succession Act, 1925 & Section 276

Citation: (2008) 05 DEL CK 0150

Hon'ble Judges: S. Ravindra Bhat, J

Bench: Single Bench

Advocate: Sunil Magon, for the Appellant; None, for the Respondent

Final Decision: Allowed

Judgement

S. Ravindra Bhat, J.

This is a petition u/s 276 of the Indian Succession Act, 1925, claiming probate of a Will executed by one Shri Ram

Das Dhir, resident of F-11, South Extension Part-II, New Delhi, dated 31.5.1983; the said Shri Ram Das Dhir is hereafter referred to as testator.

2. Briefly, the facts are that the petitioner No. 1 claims to be executor of the Will; the second and third petitioner are his wife and son. According

to averments in the petition, the testator was survived by the first petitioner and two daughters, namely Mrs. Sulochana Malhotra and Mrs. Mohini

Rai. The petitioner claims that the testator was pre-deceased by a son who was not survived by any issue. Reliance is placed upon the third recital

in the Will which refers to the testator's widow and younger son having pre-deceased him.

3. The Will which has been produced along with the petition, makes various bequests including a cash bequest to Smt. Bhagwan Devi, wife of Shri

Pritam Singh and the bequest of the immovable property in the house bearing No. M-4, South Extension, Part-II, New Delhi, to the first and third

petitioner. The testator also bequeathed Rs. 1 lakh to the first petitioner's daughter, at the time of her marriage as his (testator's) gift. All other

movable properties were bequeathed to the first petitioner in terms of paragraph 7 of the Will. The first petitioner was also appointed as the sole

executor of the Will.

4. The petitioners impleaded Mrs. Sulochana Malhotra who had then survived her father (the testator) as well as the children of Mrs. Mohini Rai,

who, at the time of the presentation of this petition, had died. Mrs. Mohini Rai was the second daughter of the testator.

5. This petition was filed on 5.1.2001. At that time, the near relatives of the deceased testator surviving were Mrs. Sulochana Malhotra and the

heirs of Mrs. Mohini Rai. They were accordingly impleaded as respondents Nos. 2 to 4. The petitioner filed list of assets along with its estimated

value, and marked it as Annexure "C to the petition. On 24.9.2001, the Court recorded the service through publication to the respondent No. 1

who had reportedly died. Respondent No. 3, i.e. Mr. Sunil Rai was duly served. However, respondent No. 4 was not served. After some

proceedings, respondents Nos. 3 and 4 (Mr. Sunil Rai and Mrs. Shahnaz Sharma, heirs of Mrs. Mohini Rai) were unrepresented. The order sheet

of 27.1.2003 reveals that legal representatives of deceased Mrs. Sulochana Malhotra, were represented by a counsel. They were subsequently

represented again in Court on 1.3.2004. Their application for impleadment, i.e. IA 239/2003 was allowed. Later the amended memo of parties

reflecting their status was also taken on the record.

6. The heirs of Mrs. Sulochana Malhotra, the deceased second respondent, and heirs of Mrs. Mohini Rai, the other daughter of the testator

objected to issue of probate; they did not file any pleading in these proceedings. One Mr. K.L. Bhatia, who the petitioners allege had trespassed

the petitioner's property, moved the Court during the pendency of these proceedings for impleadment by filing IA 563/2005 on 12.1.2005. He

claimed to have acquired one-third share in the property through legal representatives of Smt. Mohini Rai, i.e. the respondents Nos. 3 and 4 in

these proceedings. The petitioners, in the reply, denied the claim. On 24.3.2008, the said applicant, Shri K.L. Bhatia withdrew his impleadment

application, i.e. IA 563/2005.

7. After the above event, the parties led the evidence. The statements of the petitioners were recorded by their evidence and exhibited as PW-1/X,

PW-2/X and PW-3/X. The said three petitioners also deposed to having executed the affidavits, under oath, before the Joint Registrar of this

Court, on 31.3.2008.

8. The Will was attested by two witnesses, i.e. Shri S.P. Jain and Shri Bharat Singh. According to the petitioners Shri S.P. Jain had died by the

time, this case went to trial. However, the other attesting witness, Shri Bharat Singh was alive. He deposed in favour of the petitioner and for grant

of probate by filing an affidavit Ex.PW-4/X, he also got his statement recorded, under oath, before the Joint Registrar deposing to the correctness

of his affidavit, on 31.3.2008.

9. According to PW-4, i.e. Shri Bharat Singh, the testator had called him to his residence for the purpose of witnessing execution of the will and

for attesting it. PW-4 also mentions about presence of the other attesting witness, Shri S.P. Jain and further having seen, the testator sign on the

Will Ex.PW-1/B at the point, referred to as "X". He deposes to Shri S.P. Jain, the other witness having affixed his signatures on the instructions of

testator as an attesting witness.

10. The Court has considered the order sheets, and the materials, in these proceedings. The evidence led in support of the petition includes the

death certificate which is presented as Ex.PW-1/A deposition of attesting witness. The said witness PW-4 has unequivocally deposed to the due

execution of the Will by the testator in his presence. The order sheets and the record also reveal that the near relatives and subsequently their legal

representatives though served and made aware of these proceedings have not objected to the grant of probate to the petitioners. This Court has

received a valuation report in respect of the immovable property, which is subject matter of the suit property, i.e. M-4, South Extension, Part-II,

New Delhi, dated 30.1.2006. The said valuation report is hereby accepted.

11. In view of the above discussion, the Court is of the considered opinion that the petitioners have proved the due execution of the Will by the

testator and their entitlement, as legatees in it. The Court is, therefore, satisfied that probate should be granted.

12. Test Cas No. 1/2001 is accordingly allowed. Probate is granted to the first petitioner subject to the his furnishing administration bond, to the

satisfaction of the Registrar and paying the requisite stamp duty.