Mr. Varinder Sharma Vs State

Test. Cas. No. 27 of 2007

Court: DELHI HIGH COURT

Date of Decision: April 29, 2016

Citation: (2016) 234 DLT 2

Hon'ble Judges: Mr. Valmiki J. Mehta, J.

Bench: Single Bench

Advocate: Mr. Yajur Bhalla and Mr. Shubham Bhalla, Advocates, for the Petitioner

Final Decision: Allowed

Judgement

Valmiki J. Mehta, J. (Oral)â€"This testamentary case is filed by the two petitioners namely Sh. Varinder Sharma and Sh. Nitin Sharma, seeking

probate/letters of administration in their favour of the Will dated 5.12.2006 of their deceased grandfather Sh. Tirath Ram, a male Hindu who died

at Chandigarh on 6.4.2007. Probate petition is filed at Delhi as deceased died leaving behind a property at Tri Nagar, Delhi.

2. As per the amended petition filed on 21.1.2008, there are a total of six respondents but the respondent no.2 is in fact more than one respondent

because there are three respondents no. 2A to 2C. Only these respondents no. 2A to 2C had filed their objections. These respondents no. 2A to

2C however have thereafter withdrawn their objections on account of settlement between them and the petitioners on account of respondents no.

2A to 2C receiving certain properties at Chandigarh. An Order of a learned Single Judge of this Court dated 28.5.2015 accordingly records that

respondent nos. 2A to 2C are not pursuing their objections/written statement. In fact, these respondent nos. 2A to 2C have also not led any

evidence. So far as the other respondents are concerned, they did not appear after service and accordingly they were proceeded ex parte on

5.9.2008 and thereafter issues were framed.

3. On 5.9.2008 the following issues were framed:-

(i) Whether the petitioner proves the valid execution and attestation of the Will dated 5th December, 2006 by the deceased testator Sh. Tirath

Ram? OPP

(ii) Whether the contesting respondents prove that the testator did not have the capacity to execute the Will due to his illness, and as a

consequence the petition should not be granted? OPR

(iii) Relief, if any.

4. Issue no.(ii) will stand decided against the respondent nos.2A to 2C because not only they have not led any evidence, but they have in fact

withdrawn their objections to the grant of probate/letters of administration to the petitioners.

5. At this stage, I may note that since there is no executor appointed under the Will, no probate can be granted of the subject Will in view of

Section 222 of the Indian Succession Act, 1925 and therefore, letters of administration will have to be granted with the Will annexed once this

testamentary case is allowed.

6. Petitioners have led the evidence of the attesting witness PW-3 Smt. Kamlesh Sareen who has filed her evidence by way of affidavit dated

26.4.2016. In this affidavit by way of evidence the attesting witness Smt. Kamlesh Sareen has deposed with respect to the deceased executant Sh.

Tirath Ram Sharma signing the Will in the presence of the two attesting witnesses and the two attesting witnesses signing in the presence of the

testator/executant/Sh. Tirath Ram. The Will has been proved and exhibited as Ex.PW4/1. I may note that the earlier affidavits filed on behalf of the

attesting witnesses did not completely depose with respect to the due execution and attestation of the Will, and therefore, the attesting witness Smt.

Kamlesh Sareen had filed her fresh affidavit on 26.4.2016 regarding the due execution and attestation of the Will. The Will in fact has been

registered before the Sub-Registrar, Chandigarh on 5.12.2006. In the affidavit dated 26.4.2016, the attesting witness Smt. Kamlesh Sareen has

deposed with respect to Sh. Tirath Ram executing the Will in sound disposing mind and without coercion or pressure.

7. Sh. Prem Kishan Dass, Advocate the second attesting witness, has filed his second affidavit by way of evidence dated 26.4.2016, wherein he

has deposed with respect to he having scribed the Will as also signing as an attesting witness to the Will. In this affidavit this attesting witness has

deposed with respect to the due execution and attestation of the Will by the testator signing in front of the attesting witnesses and the attesting

witnesses signing in front of the testator.

8. The death certificate of Sh. Tirath Ram has been proved and exhibited as Ex.PW1/1. PW-1 is the petitioner no.1 Sh. Varinder Sharma.

9. In view of the evidence led on behalf of the petitioners, I hold that the Will of Sh. Tirath Ram Ex.PW4/1 is duly proved. Petitioners are therefore

granted letters of administration of the Will annexed being the Will dated 5.12.2006 executed by Sh. Tirath Ram which is duly registered before

the Sub-Registrar, Chandigarh.

10. Since the petitioners are the beneficiaries under the Will, letters of administration will be granted to the petitioners without any administration

bond or surety bond. Petitioners however will pay the court fees as required by law.

11. Petition is accordingly allowed and disposed of in terms of the aforesaid observations.