

(2008) 03 DEL CK 0248

Delhi High Court

Case No: Test Case No. 2 of 1999

Shri Kamal Chopra

APPELLANT

Vs

State

RESPONDENT

**Date of Decision:** March 10, 2008

**Acts Referred:**

- Court Fees Act, 1870 - Section 19

**Hon'ble Judges:** S. Ravindra Bhat, J

**Bench:** Single Bench

**Advocate:** Rajesh Bhardwaj and Rajeev Ranjan, for the Appellant; None, for the Respondent

### Judgement

S. Ravindra Bhat, J.

This is order will dispose off IA No. 1962/08 preferred u/s 19 of the Court Fees Act, 1870 for the grant of probate certificate in accordance with the valuation submitted by the petitioner.

2. The Petitioner had sought the grant of letters of Administration concerning the Will of one Shri. Samarath Ram Chopra (hereafter "the testator"), who died on 16th December, 1988. It is averred in the petition, that the testator had executed a will dated 21st October 1988, was a permanent resident of N-258/B, Greater Kailash-1, New Delhi, at which place the testator was residing at the time of his death. The testator, who is survived by four sons and two daughters, through the aforesaid will, bequeathed all his movable and immovable properties (enlisted in Schedules A and B to the petition) in their names. It is also averred that the testator had named his son, the present petitioner as the executor of the will. Further, it is averred that the will was executed in the presence of two witnesses and the same was registered with the Sub-Registrar, Delhi as document No. 17532 in Book No. 3, volume No. 659 at pages 91-96 on 21st October 1988. It is also stated that the aforesaid will is the last will of the testator and that no other party has any claim, rights or ownership of any nature in the properties mentioned in Schedules A and B to the petition. In

support of the petition, the petitioner filed the original copy of the will dated 21.10.1988, original copy of the death certificate dated 21.12.1998 and affidavits of Mr. Vijay Mandla and Mr. Jawahar Lal, the attesting witnesses.

3. Notice of the petition was issued; notice to the public at large was also published in the newspaper "The Statesman" in its Delhi edition, dated 27.02.1999. The other heirs specified in the petition entered appearance and stated that an award has been passed after the heirs referred the matter to arbitration. The award has been drawn in terms of the will and sought that the petition be disposed off in the above terms. The original copy of the award dated 4.9.1999 passed by Shri. Kul Pratap Chandhok and Shri. Surinder Seth was also filed. Meanwhile, constant reminders were sent to the respective revenue authorities for valuation of the immovable properties mentioned in Schedule A. On 8th February 2001 both the attesting witnesses were examined in Court, and they stated that will was attested in their presence by the testator while he was in a normal state of mind. Following which the Court passed the following order:

The probate certificate be issued. Court fee be paid within four weeks after the assessment of the value of the property. The parties agree to abide by the Award dated 4th September, 1999 passed by Shri. Kul Pratap Chandhok and Shri. Surinder Seth who passed an award in terms of the will.

The petition stands disposed off.

4. Subsequently, the petitioner preferred an application No. 1962/08 u/s 19 of the Court Fees Act, 1870 requesting the Court to grant probate of the will, valuing the properties at Rs. 1,52,45,473.55/-, since constant reminders to the revenue authorities have not yielded any results.

5. On 14th August 2001, the Tehsildar (Hauz Khas) filed his valuation report, in which the concerned properties were valued at Rs. 1,66,00,000/-. This report seems to have escaped the attention of all concerned. In fact, there is no reason to doubt the report. In the light of this report, the prayer sought for in this application cannot be granted. Probate certificate may granted in accordance with valuation report submitted by the Tehsildar.

6. Accordingly, the application and the probate petition are disposed off. Probate certificate may be granted subject to payment of court fee, in terms of the Tehsildars valuation report administration bond and surety bond in the above terms.