

Ashok Dhar Vs. the State and ors

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Court : Delhi

Decided On : Feb-05-2014

Judge : A. K. Pathak

Appellant : Ashok Dhar

Respondent : The State and ors

Judgement :

\$~14 *IN THE HIGH COURT OF DELHI AT NEW DELHI + TEST.CAS. 45/2013
Decided on 5th February, 2014 ASHOK DHAR Petitioner Through Mr. Yash Mishra, Adv. versus THE STATE AND ORS Through Respondents :Mr. Gursharan Singh, Adv. for respondent No.1 Ms. Sonam Sharma, Adv. for respondent No.2 Ms. Chandni Goyal, Adv. for respondent nos. 3 to 8 Respondent No.10 in person CORAM: HON'BLE MR. JUSTICE A.K. PATHAK A.K. PATHAK, J.

(ORAL) 1. Petitioner has filed this petition under Section 276 of the Indian Succession Act, 1925 for grant of probate of the Will dated 14th August, 2001 of Late Shri Manmohan Dhar. Respondent No.3 is sister and respondent nos. 4 to 8 are brothers of Late Shri Manmohan Dhar.

2. It is alleged in the petition that deceased was a Hindu, governed by the Hindu Succession Act, 1956. He was permanent resident of C-56, Kailash Apartments, Lala Lajpat Rai Marg, New Delhi. He died on 21st January, 2009 at Lilavati

Hospital in Mumbai. Deceased made and published his last Will and testament while he was in command of his full senses and was possessed of perfect disposing mind. Deceased appointed petitioner as one of the Executor to perform all the formalities as contemplated in the Will. The Will dated 14th August, 2001 was signed by the Testator in presence of two witnesses, namely, Shri C.M. Nehru and Shri S.K. Raina. Respondent No.2 Shri Deepak Dhar was another named Executor and was a permanent resident of Pune, thus, the petition was being filed by the petitioner. Deceased did not have any liability against any individual, association or company at the time of his death. Respondent nos. 3 to 7 had relinquished their rights, title and interest in the property bearing No.C-56, Kailash Apartments, Lala Lajpat Rai Marg, New Delhi in favour of respondent No.8, as was contemplated in the Will. They had issued no objection certificate to this effect. No other petition was filed in any Court of law seeking probate of the Will dated 14 th August, 2001. Petitioner has prayed that probate of Will dated 14 th August, 2001 be granted in his favour.

3. Respondent nos. 3 to 8 appeared through their counsel and made a statement that they had filed affidavits stating therein that they had no objection for grant of probate to the petitioner. Citation was also published on 3rd August, 2013 in the newspapers The Times of India and Navbharat Times. No public person filed any objection against the grant of probate, pursuant to the publication of the citation in the newspapers.

4. Petitioner has led evidence by affidavits. In his affidavit Ex. PW1/A he has reiterated the averments made in the petition. He has deposed that Late Shri Manmohan Dhar was a Hindu; he passed away on 21st January, 2009 in Lilavati Hospital at Mumbai. Death Certificate has been exhibited by him as Ex. PW1/1. He has further deposed that deceased was permanent resident of C-56, Kailash Apartments, Lala Lajpat Rai Marg, New Delhi. Respondent No.3 is sister and respondent nos. 4 to 8 are brothers of deceased. Late Shri Manmohan Dhar executed a Will dated 14th August, 2001 while he was in command of full senses and possessed perfect disposing mind. This was last Will of the deceased. Will was executed by the deceased in presence of two witnesses, namely, Shri C.M. Nehru, resident of C-58, Kailash Apartments, Lala Lajpat Rai Marg, New Delhi and

Shri S.K. Raina, resident of 15/89, Vikram Vihar, Lajpat Nagar 4, New Delhi. Original Will has been proved by him as Ex. PW1/2. He has further deposed that he was named Executor in the Will. Second Executor named in the Will was permanent resident of Pune, therefore, he alone was carrying out the duties of execution of the Will.

5. Respondent nos. 2 to 8 have filed their affidavits stating therein that they have no objection for grant of probate of the Will. Respondent No.2, another executor of the Will, has also filed his affidavit stating therein that he has no objection to the petition and grant of probate.

6. Two attesting witnesses to the Will, namely, Shri C.M. Nehru and Shri S.K. Raina have also filed their affidavits. They have fully supported the version of PW1. They have deposed that deceased was permanent resident of C-56, Kailash Apartments, Lala Lajpat Rai Marg, New Delhi and before passing away, had made the Will dated 14th August, 2001 Ex. PW1/2, while he was in command of his full senses and possessed perfect disposing mind. Deceased signed the Will dated 14th August, 2001 in their presence. Their statements have remained unchallenged as they have not been cross-examined, inasmuch as none of the legal heirs of Late Shri Manmohan Dhar has objected to the grant of probate of the Will, inasmuch as have filed their affidavits stating therein that they have no objection if probate is granted to the petitioner.

7. From the evidence adduced by the petitioner, more particularly, witnesses to the Will, in my view, petitioner has succeeded in proving that Late Shri Manmohan Dhar had executed his last Will dated 14th August, 2001, while he was in full disposing mind.

8. Valuation report has been submitted by the Sub Divisional Magistrate, Hauz Khas, which is on record. As per this report, value of the property is Rs.1,36,00,560/(Rupees One Crore Thirty Six Lacs Five Hundred Sixty Only).

9. In view of the statements of the witnesses and the documents placed on record, I am satisfied that petitioner has succeeded in proving that Testator had executed the Will dated 14th August, 2001 which is his last Will and testament. That apart,

none of the respondents have come forward to challenge the Will, inasmuch as, they have given their no objection to the grant of probate. Above all, Will has to be properly proved by producing, at least one of the attesting witnesses, which petitioner has done. PW-1 has categorically deposed that the Testator has executed and signed the Will dated 14th August, 2001 in presence of the attesting witnesses. Accordingly, I do not find any impediment in granting the probate to petitioner in respect of the Will of testator.

10. For the aforesaid reasons, probate of the Will dated 14 th August, 2001 executed by Late Shri Manmohan Dhar is granted to the petitioner, subject to his paying requisite court fee and furnishing administrative bond with one surety, to the satisfaction of Registrar General of this Court.

11. Petition is disposed of in the above terms. A.K. PATHAK, J.

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