

Prem Kumari Vs. the State and ors

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Court : Delhi

Decided On : Feb-17-2014

Judge : A. K. Pathak

Appellant : Prem Kumari

Respondent : The State and ors

Judgement :

§~14 *IN THE HIGH COURT OF DELHI AT NEW DELHI + TEST.CAS. 11/2002
Decided on 17th February, 2014 PREM KUMARI Petitioner Through: Ms. Ankita Mahajan and Ms. Ashwarya Chander, Advs. versus THE STATE AND ORS Through: Respondents Mr. M.P. Parithapan, Adv. CORAM: HON'BLE MR. JUSTICE A.K. PATHAK A.K. PATHAK, J.

(ORAL) 1. Petitioner has filed this petition for grant of probate of the Will dated 7th June, 1998 of Late Shri R. Sundara Rajan (hereinafter referred to as Testator). Petitioner is sister of Testator. She has alleged that Testator was a Hindu, having his fixed place of residence within the jurisdiction of this Court. Testator died on 7th August, 1998.

2. On 7th June, 1998 Testator made and published his last Will and Testament whereby he left behind his estate in the manner as stated in the Will and also appointed the petitioner as sole executrix of his Will. Testator made his Will in full disposing mind and in the presence of two witnesses, Affidavit of Shri V.

Vasudevan one of the attesting witnesses to the Will was annexed with the petition. Petitioner has prayed that probate of Will dated 7th June, 1998 be granted in her favour.

3. List of relatives of Testator has been filed during the pendency of present proceedings. As per this list, wife and minor son of the deceased have been shown at serial nos. 9 and 10 respectively. Other relatives, have been shown at serial nos. 1 to 8.

4. After publication of citation in the newspaper Statesman on 23rd September, 2002, no one came forward from the public to oppose the grant of probate to petitioner.

5. Relative nos. 1 to 8 have filed their respective affidavits stating therein that they have no objection to the grant of probate to petitioner in respect of Will dated 7th June, 1998. Relative No.10 is represented by his mother, that is, relative No.9. They have filed a composite reply. Existence of Will has been admitted by them. It is stated that Will dated 7th June, 1998 was executed by the Testator. However, stand taken by them is that petitioner has not whispered anything about 1/4th share of the minor in respect of Flat No.N-2, Green Park, New Delhi. It is further stated that property bearing N-2, Green Park, New Delhi was undervalued. Relative No.9 alleged that she was entitled to administer the property.

6. Attesting witnesses to the Will dated 7th June, 1998, namely, Shri Vijay Tandon and Shri V. Vasudevan have been examined, on oath, on 16th January, 2007 as PW1 and PW2 respectively. PW-1 Shri Vijay Tandon has deposed that Late Shri R. Sundara Rajan-deceased was his neighbor, on whose instructions he drafted his Will dated 7th June, 1998. Thereafter, on 7th June, 1998 itself Shri R. Sundara Rajan signed the Will in his presence and in the presence of Shri V. Vasudevan on all pages at points A-1 to A-9, after reading the contents thereof. He admitted his signatures at point X. He also admitted signatures of V. Vasudevan at point Y. He further deposed that Late Shri R. Sundara Rajan was in sound disposing mind and had signed and executed the Will without any kind of force, pressure or undue influence. Similar is the statement of PW2 V. Vasudevan, who has deposed that Late Shri R.Sundara Rajan was his childhood friend. Shri R. Sundara Rajan was

married to Ms. Radhika Sundra Rajan (relative No.9) and was having a son, namely, Master S. Srikant (relative No.10). Shri R. Sudara Rajan was unfortunately suffering from cancer. He was desirous of making his last Will and Testament so that no dispute arises in future in respect of his properties. Accordingly, Shri R. Sundara Rajan approached Shri Vijay Tandon, Advocate who drafted the Will dated 7th June, 1998 as per the desire of Shri R. Sundara Rajan. Will was signed and executed by Shri R. Sundara Rajan in his presence and in the presence of Shri Vijay Tandon on 7th June, 1998. He identified the signatures of Testator Late Shri R. Sundara Rajan at points A-1 to A-9 on the Will dated 7th June, 1998 Ex.P-1. He also admitted his signatures as well as signatures of Vijay Tandon at point X and Y respectively. He further admitted that Shri R. Sundara Rajan was taken to the office of Sub-Registrar for the registration of Will where it was registered in his presence. He categorically deposed that Will was executed by R. Sundara Rajan in sound disposing mind and without any kind of force, pressure or undue influence.

7. Petitioner has stepped in the witness box as PW3. Petitioner tendered her affidavit Ex.PW3/A in her evidence and has corroborated the averments made in the petition. She was not cross-examined by any of the relatives. Shri Rameshwar Dayal stepped in the witness box as PW4 and has proved his valuation report as Ex.PW4/1.

8. Valuation report has also been received from the Inspector General of Registration in respect of property, that is, 2nd Floor measuring 1131 sq. ft. having address T.S. 50, Block No.9, Door No.11, XII Cross Street, Indira Nagar, Adyar, Chennai, Tamil Nadu. As per this report, valuation of the said property is Rs.59,99,265/-. Valuation report in respect of property bearing N-2, Green Park, SF Front Portion, New Delhi has also been received from SDM, Hauz Khas according to which value of the said property is Rs. 85,79,788/-.

9. Will has been proved as Ex.P-1. Relative nos. 1 to 8 of the Testator have given their no objection to the grant of probate to petitioner. Relatives nos. 9 and 10 have also not disputed the fact that deceased had executed the Will Ex.P-1 in full disposing mind. The only objection of relative No.9 is that she being widow and

natural guardian of her minor son (relative No.10) was entitled to administer the estate of her late husband. Above all, attesting witnesses to the Will, namely, Shri Vijay Tandon and Shri V. Vasudevan, have stepped in the witness box and have categorically deposed that Testator had signed and executed the Will dated 7th June, 1998 in full disposing mind. Their statements have remained unchallenged. Section 68 of the Indian Evidence Act, 1872 envisages that if a document is required by law to be attested, it shall not be used in evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence. There can be no dispute that the will is required to be attested by two persons. It is also trite law that propounder of the will has to prove the same. In this case, both the witnesses have been produced, inasmuch as, their statements have remained unchallenged. Thus, I do not find any impediment in granting the probate to the petitioner.

10. Testator has named the petitioner as Executrix of the Will. Relevant para of the Will is reproduced as under :I appoint my sister Miss R. Prem Kumari to be the Executor of this Will. My sister Miss R. Prem Kumari will give effect to my WILL and help my son in realizing the Estate and Immovable properties.

11. Section 222(1) of the Indian Succession Act, 1925 envisages grant of probate only to an Executor appointed by the Will. SubSection 2 further provides that the appointment may be expressed or by necessary implication. In this case, Testator has appointed his sister, that is, petitioner as an Executrix to the Will dated 7th June, 1998; meaning thereby she is entitled to the grant of probate. I do not find any justification to grant probate to relative No.9, jointly with the petitioner. Petitioner is named Executrix in the Will, thus, she alone is entitled to grant of probate in terms of Section 222(1) of the Act.

12. Will dated 7th June, 1998 has remained unchallenged, inasmuch as, the same has been proved by the attesting witnesses who have categorically deposed that Will dated 7th June, 1998 was executed by Late Shri R. Sundara Rajan in full disposing mind and without any undue force or pressure. Test Case No.11/2002 petitioner, I am satisfied that petitioner has succeeded in proving that Testator had

executed the Will dated 7th June, 1998 which is his last Will and Testament of the testator. That apart, none of the respondents have challenged the Will. Accordingly, I do not find any impediment in granting the probate to petitioner in respect of the Will of testator.

13. For the aforesaid reasons, probate of the Will dated 7th June, 1998 executed by Late Shri R. Sundrajan is granted to the petitioner, subject to her paying requisite court fee and furnishing administrative bond with one surety, to the satisfaction of Registrar General of this Court.

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

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