

**Smt. Sumitra Devi Vs. State and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/1141075](http://sooperkanoon.com/1141075)

**Court :** Delhi

**Decided On :** May-16-2014

**Judge :** Valmiki J. Mehta

**Appellant :** Smt. Sumitra Devi

**Respondent :** State and ors.

**Judgement :**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI + % FAO1402014 16th May, 2014 SMT. SUMITRA DEVI Through: .....Appellant Mr.R.L.Nanda , Advocate. VERSUS STATE & ORS. .... Respondents Through: CORAM: HONBLE MR. JUSTICE VALMIKI J.MEHTA To be referred to the Reporter or not?. VALMIKI J.

MEHTA, J (ORAL) 1. This first appeal is filed under Section 299 of the Indian Succession Act, 1925 impugning the judgment of the probate court by which the petition for letters of administration filed by the appellant with respect the Will dated 5.2.2008 of her late adoptive father Sh. Lakshman Singh has been dismissed.

2. A reading of the impugned judgment shows that the following salient facts have rightly persuaded the court below to dismiss the petition: (i) Petitioner who was an adopted daughter of the deceased testator Lakshman Singh had two litigations against Sh. Lakshman Singh in his life time. The first litigation was a suit which was filed by the petitioner against her father on 4.7.2007, by which petitioner had

sought for partition of property bearing no.L-256/1, Gali No.6, Gautam Vihar, Dehi 110053 and the second litigation was a suit filed by the father against the appellant for possession, and which suit was filed in February, 2008. Though the appellant disputed these litigations in her cross-examination, however, these denials in the cross-examination were of no effect because appellant in her pleadings admitted to the factum of these litigations. Therefore, the relationship between the appellant and her deceased father were strained and therefore there was no reason as to why the deceased testator/father/Sh. Lakshman Singh would have executed a Will in favour of the appellant giving to her his property exclusively and ousting his widow, one son and a daughter. (ii) The attesting witness PW-3 who appeared on behalf of the appellant, originally had attested the petition for letters of administration as an attesting witness to the Will, however in his evidence he admitted that blank papers were got signed from him and that the testator Sh.Lakshman Singh never signed the alleged Will in his presence. These aspects are noted by the court below in paras 17 and 18 of the impugned judgment and which read as under:

17. PW-3 is Sh. Ram Khiloni. He is one of the attesting witness of to Will and whose certificate appears in the body of the petition. Since his evidence is material for the purposes of outcome of this petition, the same is reproduced as under:

I have come to depose on being summoned by the court. I can read and write in Hindi. (This witness was summoned by the petitioner as he is the attesting witness to the Will dated 05.02.2008 of Late Sh. Luxman Singh Ex.PW1/3. Witness has gone through this document.) I identify my signature which appears on point A on the third page of this document. Luxman Singh did not ask me to sign this document as an attesting witness to the same. Luxman Singh did not sign this document in my presence. Court Question: How does appear at point A of this document?. your signature Ans. I am known to one Sh. Omprakash who works as a court clerk (Munshi) of an advocate in Chamber no.293, Tis Hazari Courts, Delhi. He is my friend. The petitioner Sumitra Devi is my distant relative, being sister-in-law. She came into contact with Om Prakash through me. Sh. Om Prakash came to me with blank paper and aksed me to sign the same to help her asking me to depose that she is my sister-in-law. This blank paper has been used

to prepare this document. I am not aware about the contents or the correctness of the same. The same was not prepared in my presence. (Counsel for the petitioner seeks permission to cross-examine the witness. Permission granted) XXXX By Sh. K.C.Malhotra Ld. counsel for the petitioner. The photograph on the first page of this document is of Sh. Luxman Singh. Sh. Luxman Singh is related to me being distant father-in-law (Mamia Sasur). It is wrong to suggest that I appended my signature at point A on the Will on the asking of Luxman Singh in his presence and Luxman Singh also signed the Will in my presence. I know the petitioner since I got married in the family. There is no case pending against me in any other court. I am not aware of pendency of any suit in any court in which I may be party.

18. PW-3 though identified his signatures at point A on the will Ex.PW-1/3, deposed that the testator did not ask him to sign on this document. He deposed that the testator Lakshman Singh did not sign this document in his presence. In response to a court question as to how his signatures appeared on Ex.PW1/3 he deposed that he was known to one Omprakash who was working as a court clerk of an Advocate in Tis Hazari Courts. He deposed that the petitioner Sumitra was his sister in law and she herself came into contract with Omprakash through him. He deposed that Omprakash came to him with a blank paper and asked him to sign on the same to help Sumitra, asking him to depose that she was his sister-in-law. He deposed that the said blank paper was used to prepare the will Ex.PW-1/3. He deposed that he was not aware of the contents and signatures on the same. He deposed that the same was not prepared in his presence. Counsel for the petitioner cross examined PW-3 but there is nothing material which could come out from the same. Thereafter the petitioner closed her evidence on 6.8.2013.

3. Accordingly, the court below has disbelieved the factum with respect to execution of the subject Will in favour of the appellant.

4. In my opinion, both the aforesaid reasons given by the court below are sufficient for dismissal of the probate petition and I may note that the respondents had relied upon a registered Will dated 7.6.2007 executed by the deceased testator in favour of his son, respondent No.4 before the court below , though of course that aspect

was not material to be proved because the issue in the petition was with respect to validity of the Will dated 5.2.2008 and which was propounded by the appellant/petitioner.

5. In view of the above, I do not find any merit in the appeal, and the same is therefore dismissed, leaving the parties to bear their own costs. MAY16 2014 ib  
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