

Narain Malik vs. State

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Court : Delhi

Decided On : May-30-2017

Appellant : Narain Malik

Respondent : State

Judgement :

\$~ * % + IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on:

24. h May, 2017 Pronounced on:

30. h May, 2017 TEST.CAS. 59/2014 NARAIN MALIK

... Petitioner

Through Mr.Rakesh Munjal, Sr. Advocate with Mr.Ankur Arora and Mr.Mohd. Arif, Advocates. versus STATE Through Mr.R.C.Agarwal, Advocate. Respondent
CORAM: HON'BLE MR. JUSTICE YOGESH KHANNA YOGESH KHANNA, J.

1. The petitioner has filed this petition under Section 228 of the Indian Succession Act, 1925 seeking letter of administration in respect of the properties of late Nalin Malik located within the territorial jurisdiction of this Court.

2. The petitioner is the wife of late Nalin Malik, who died on 06.05.2013 in New Jersey, USA. The death certificate issued by USA authorities is annexed to the petition. It is also averred that the father of the deceased Nailn Malik namely late Shri Amar Nath Malik had expired on 05.12.2002 and his mother Mrs.Sushila

Malik had expired Test Case. No.59/2014 Page 1 of 5 on 27.11.2011 in New Jersey. Late Mr. Nalin Malik had executed a Will dated 12.03.2008 during his lifetime. As per the said Will, the testator had bequeathed all his estate and effects in favour of petitioner. Besides, the petitioner herein, there are two more legal heirs of late Nalin Malik being their sons namely Neeraj Malik and. Rajiv Malik arrayed as respondent Nos.1 & 2 respectively.

3. The aforesaid Will dated 12.03.2008 was filed/ deposited in the Surrogate's Court of Hudson County, New Jersey, USA; and thereafter duly proved and probated on 31.05.2013 before the said Court being the Last Will and Testament of late Nalin Malik. The said Court was the Court of competent jurisdiction and the Will was probated vide judgment dated 31.05.2013 in accordance with law. The said Will dated 12.03.2008 is now a part of the records of the said Court. The said Court had also issued Letters of Administration dated 04.06.2013 in favour of the

... Petitioner

. Further, the Will dated 12.03.2008 was not disputed or contested by anyone before the Surrogate's Court of Hudson County, New Jersey, USA. Upon grant of Letters of Administration by the Surrogate's Court of Hudson County, New Jersey, USA, the

... Petitioner

had realized the estate of deceased Nalin Malik which was situated in USA. It is also claimed that there are properties/ estate of deceased Nalin Malik, which are located within territorial jurisdiction of this Court as per the schedule of properties Annexure A has been filed with the petition. As per schedule there is a vacant plot of land admeasuring about 324 square meters being Plot No.29, Bhirochi Cooperative House Building Society Limited, Bhera Enclave, New Delhi - 110087. There are Test Case. No.59/2014 Page 2 of 5 bank deposits with the State Bank of India, Parliament Street, New Delhi.

4. It is averred that in compliance of the order dated 30.05.2014 of this Court, the petitioner got published the citation in "Statesman" newspaper on 05.08.2014 which is placed on record. The affidavits of Mr.Michael J.

Murfi and Ms. Jo Ann Bradi, who were the witnesses to the execution of the Will dated 12.03.2008 are also filed on record. Both respondents Nos.2 & 3 have also filed their respective affidavits, stating therein that they do not have any objection if the present petition is allowed and that the petitioner is granted Letters of Administration in respect of aforesaid properties of deceased Nalin Malik. The certified/authenticated copy of the Will dated 12.03.2008 was obtained from Hudson County Surrogate's Court and the same was placed on record on 21.03.2017. The petitioner and her attorney has also filed additional affidavits on 26.04.2017 affirming that the copy of the Will as was placed on record is a certified and duly authenticated copy of original Will dated 12.03.2008 which was obtained from Hudson County Surrogate's Court where the Will was proved and probated.

5. The contents of the petition are not disputed or objected or contested by any of the respondents and the respondent Nos.2 & 3 have filed their affidavits affirming that they do not have any objections if the Letter of Administration as prayed for, is granted in favour of the petitioner on the basis of the Will dated 12.03.2008. The petitioner is the beneficiary as per the Will of Nalin Malik and is Test Case. No.59/2014 Page 3 of 5 entitle to all his properties/ estate and there is no impediment in granting the relief as sought by petitioner.

6. I have heard the submissions of learned senior counsel for petitioner and learned counsel for respondent.

7. The claim of the petitioner can be allowed without any evidence as per Section 228 of the Indian Succession Act, 1925, which reads as under:-

"228. Administration, with copy annexed, of authenticated copy of Will proved abroad.-When a Will has been proved and deposited in a Court of competent jurisdiction situated beyond the limits of the State, whether within or beyond the limits of (India), and a properly authenticated copy of the Will is produced, letters of administration may be granted with a copy of such copy annexed. 8. The Will has already been proved in the Foreign Court of competent jurisdiction and the only requirement stipulated under Section 228 of the Act for seeking letter of administration is that the petitioner has to file authenticated copy of the Will dated 12.03.2008. In Dharamvir Sharma vs. State & Ors 148 (2008) DLT149this Court

held as follows:-

"7. The object of Section 228 is to dispense with the need to produce the original will owing to its deposit in some other Court. The order under this provision is not like Section 276; however, its ancillary to a grant made by a competent Court. Before making an order on such application, the Court has satisfy itself that the copy produced before it answers the description in Section 228. Test Case. No.59/2014 Page 4 of 5 9. The Will dated 12.03.2008 satisfies the requirement of Section 228 (supra), hence I accept the WILL executed by late Nalin Malik for which the probate was granted on 31.05.2013 by the Hudson Country Surrogates Court, State of New Jersey, USA. The petitioner is hereby granted letter of administration in respect of the properties viz deposits in SBI, Parliament Street, New Delhi and a Plot No.29, Bhirochi Cooperative House Building Society Limited, Bhera Enclave, New Delhi - 110087 admeasuring 324 square yards, subject to the petitioner paying the requisite court fee, on the basis of the valuation of the term deposit, indicated by SBI, Parliament Street, New Delhi and also on the basis of valuation of immovable property by the concerned SDM and upon furnishing administration bond and surety bond.

10. Registry to issue the letter of administration with Will annexed to the petitioner on her depositing the requisite stamp duty, as per law.

11. The petition stands disposed of. YOGESH KHANNA, J MAY30 2017 M Test Case. No.59/2014 Page 5 of 5

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