

Ajay Khosla vs.state & Ors

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Court : Delhi

Decided On : Jul-31-2017

Appellant : Ajay Khosla

Respondent : State & Ors

Judgement :

\$~21 * + % IN THE HIGH COURT OF DELHI AT NEW DELHI TEST.CAS.
81/2015 AJAY KHOSLA Through Mr. Arvind Bhatt, Advocate

... Petitioner

versus STATE & ORS

... RESPONDENTS

Through Mr. Kiran Singh, Advocate for R-1. Mr. Azhar, Advocate for R-2, 3 and 4.

Date of Decision:

31. t July, 2017 CORAM: HON'BLE MR. JUSTICE MANMOHAN

JUDGMENT

MANMOHAN, J (Oral):

1. Present petition has been filed by the petitioner under Sections 222 and 286 of the Indian Succession Act for grant of probate in respect of Will dated 09th May, 2011 of the deceased Dr.Sarla Khosla.

2. It has been averred in the petition that the petitioner is the nephew of the deceased Dr.Sarla Khosla, who expired on 12th April, 2013. It has been further averred that Dr.Sarla Khosla was unmarried and died issueless. The deceased is stated to have executed a registered Will dated 09th May, 2011, which was duly attested by Sh.Maneesh Bawa and Smt. R.Beena. The Will dated 09th May, 2011 executed by the deceased is reproduced hereinbelow:-

"WILL1 I Sarla Khosla, daughter of late Shri Hem Raj Khosla, aged about 86 years, residing at B-III/8-B, Lawrence Road Colony, TEST.CAS. 81/2015 Page 1 of 7 Delhi do hereby revoke all former Wills and Codicils and Testamentary Dispositions (including my Will dated 05.07.1977 registered on 07.07.1977 with the Sub-Registrar, Jammu City, Jammu and my wills dated 09.11.1991 and 29.09.2007) made by me and declare this Will to be my last Will and Testament.

2. I am maintaining good health and possessed of sound mind. This Will is made by me of my own free will and I have not been coerced or cajoled by any person whatsoever in the execution of this Will.

3. I hereby appointed Mr.Ajay Khosla, son of my brother Shri Ranpat Rai Khosla, to be the Executor of this my Will.

4. I directed that the said Executor shall pay my just debts, taxes and other liabilities, if any, out of the property which I may die possessed of.

5. I bequeath the property comprising DDA Flat No.8-B located in Block B-III situated in Lawrence Road Colony, Delhi (including the scooter garage allotted to me as part of this property) to Shri Ajay Khosla, son of my brother Shri Ranpat Rai Khosla.

6. Out of my financial assets, namely, cash, bonds, units of mutual funds, balances in my bank accounts, fixed deposits with banks and other deposits, I bequeath as under:-

"i) Rs.Two Lakhs (Rs.2,00,000/-) to my sister-in-law Smt. Uma Khosla, wife of Shri Ranpat Rai Khosla; ii) Rs.Fifty Thousand (Rs.50,000/-) to Shri Rajan Khosla, son of my brother Late Shri Lajpat Rai Khosla; iii) Rs.Fifty Thousand (Rs.50,000/-) to

my sister Smt. Krishna Soni; iv) Rs.Fifty Thousand (Rs.50,000/-) to Pinki, wife of Shri Man Mohan Kundra (S/o Late Shri & Smt.Rameshwar Raj Kundra); v) Rs.One Lakh (Rs.1,00,000/-) to Vidyasagar Institute of Mental Health and Neurological Sciences, New Delhi; vi) Rs.One Lakh (Rs.1,00,000/-) to Kailash Bahl B.S.Bahl TEST.CAS. 81/2015 Page 2 of 7 Educational and Charitable Turst; and vii) Rs.One Lakh (Rs.1,00,000/-) to Hospital Welfare Society (Regd.), Safdarjung Hospital, New Delhi; viii) Rs.One Lakh (Rs.1,00,000/-) to D.A.V. College Managing Committee ix) The balance to Mr.Ajay Khosla, son of my brother Ranpat Rai Khosla.

7. I bequeath my jewellery to the following, namely:-

"i) One gold kara (double bangle with white gold spots), one diamond ring and one pair of big pearl tops to Mrs.Uma Khosla; ii) One pair of ear tops with white precious pearls, one silver ring with big white pearls and one gold ring to Mrs.Rajan Khosla; iii) One pair of semi-precious white stones and one pair of gold ear rings to Mr.Man Mohan Kundra (S/o of my late sister Swaraj Kundra); iv) One silver tumbler to my brother Shri Ranpat Rai Khosla; v) Two gold bangles to Smt.Krishna Soni.

8. I direct that the Executor shall donate all my books to a library of his choice.

9. I direct that the Executor shall distribute all my household effects and the balance of my property that I may die possessed of equitably among Shri Rajan Khosla S/o my brother Late Shri Lajpat Rai Khosla, Shri Ranpat Rai Khosla and Smt.Krishna Soni.

10. The last wish of mine is that after my death, my body should be given to a renowned hospital who would use the absolute virgin bones for the study of medical students in their research and the body will be disposed of accordingly. 3. Notice was issued on the present petition on 21st August, 2015. Citation was also directed to be issued vide order dated 10th December, TEST.CAS. 81/2015 Page 3 of 7 2015, which came to be published in the English edition of the daily newspaper The Statesman and Hindi edition of daily newspaper Veer Arjun. No objections have been received to the Will after publication of the citations. Notices

were duly served on the State and the other respondents.

4. The respondent nos. 2 to 4 and 8 to 15 have filed their No Objection supported by their affidavits.

5. The other Class-II heirs of the deceased namely, respondent nos. 5 to 7 have despite service, neither filed any Objection nor any reply. Consequently, the learned Predecessor of this Court on 07th February, 2017 proceeded ex parte against the said respondents.

6. As regards the petitioner, he has adduced evidence by filing his own affidavit. The affidavit tendered by him in evidence is marked as Ex.PW1/A. It has been stated by the petitioner in his affidavit that the Testator was in a sound disposing mind at the time of signing the Will which was duly executed by him in the presence of the witnesses. It is further stated that the Testator expired on 12th April, 2013 at New Delhi leaving behind his last will and testament dated 09th May, 2011. The petitioner has proved the Death Certificate of the Testator as Ex.PW1/1.

7. Sh.Maneesh Bawa, first attesting witness has filed his affidavit dated 18th March, 2017. In the said affidavit, he has deposed as under:-

"I, the deponent above-named do hereby solemnly affirm and declare as under:

1. I am a businessman by profession.

2. I knew late Smt. Sarla Khosla. She was sister of my uncle Shri Ranpat Rai Khosla and I used to meet her. TEST.CAS. 81/2015 Page 4 of 7 3. Dr. Sarla Khosla died on 12.04.2013. Original Death Certificate is Annexure A [pp4:002]. to this petition and is Exhibit PW1/1.

4. On 9.05.2011 Smt. Sarla Khosla executed her Will. I have seen the original Will and has been filed as Annexure C [pp4:004]. to the petition in this case and is Exhibit-PW-1/2. I attested the said Will as first witness.

5. Dr. Sarla Khosla signed her Will on each (two) page at point F& G.

6. I attested the Will as first witness, have placed my signatures on the Will at point B and C respectively. Smt. R. Beena placed her signatures on the Will as the second witness at point D and E. It is Exhibit-PW-1/2.

7. Original Will was placed in a sealed cover on 1.12.2015. Certified copy of the Will dated 9.05.2011 was filed in court on 9.09.2016.

8. That as attesting witness to the Will I have also given affidavit in support which is Annexure D to the petition and is Exhibit PW1/15.

9. Dr. Sarla Khosla was of a sound and disposing state of mind at the time of execution of the Will. Even after executing of the Will she was maintaining a sound disposing mind. 8. Smt.R.Beena, the second attesting witness has filed her affidavit dated 18th February, 2017. In the said affidavit, she has deposed as under:-

"I, the deponent above-named do hereby solemnly affirm and declare as under: I am working as Executive Assistant to Shri Ajay Khosla 1. since 2007. His office is located at D-1/15, First floor, Vasant Vihar, New Delhi-110057. I knew late Dr. Sarla Khosla. She was aunt (Bua) of Shri 2. Ajay Khosla. As she was unmarried and staying alone, Shri Ajay Khosla considering her old age requested her to stay at D- 1/15, Ground floor, Vasant Vihar, New Delhi-110057, so that TEST.CAS. 81/2015 Page 5 of 7 9. she can look after properly. Since around 2010-11 she agreed and started living at Ground floor, Vasant Vihar, New Delhi. I use to meet her almost daily. In first week of May, 2011 she told me that she was going to make a Will and that I should attest it.

3. Dr. Sarla Khosla died on 12.04.2013. Original Death Certificate is Annexure A [pp4:002]. to this petition and is Exhibit PW1/1.

4. On 9.05.2011 Smt Sarla Khosla executed her Will. I have seen the original Will and has been filed as Annexure C [pp4:004]. to the petition in this case and is Exhibit-PW-1/2. I attested the said Will as second witness.

5. Dr. Sarla Khosla requested me to attest the Will dated 9.05.2011. She after reading the entire Will signed it on each (two) page at point F and G in any

presence.

6. Thereafter, Shri Maneesh Bawa has placed his signatures on the Will as the first witness at point B and C. I attested the Will as second witness, have placed my signatures on the Will at point D and E respectively in presence of Dr. Sarla Khosla. It is Exhibit-PW-1/2.

7. Original Will was placed in a sealed cover on 1.12.2015. Certified copy of the Will dated 9.05.2011 was filed in court on 9.09.2016.

8. That as attesting witness to the Will I have also given affidavit in support which is Annexure E to the petition and is Exhibit PW1/16.

9. Dr. Sarla Khosla was of a sound and disposing state of mind at the time of execution of the Will. Even after that we met regularly and she was maintaining a sound disposing mind. In view of the above, this Court is satisfied that the petitioner has succeeded in proving that the deceased Dr.Sarla Khosla had executed the Will dated 09th May, 2011 and the said Will was her last Will and testament.

10. Consequently, the present petition is allowed. The probate in respect of the Will dated 09th May, 2011 annexed thereto is granted in favour of the petitioner, subject to his furnishing the requisite Court fee in terms of the TEST.CAS. 81/2015 Page 6 of 7 valuation report and submitting an administrative bond with one surety in accordance with law. MANMOHAN, J JULY31 2017 KA TEST.CAS. 81/2015 Page 7 of 7

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