

g.s. Agarwal vs.state

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Court : Delhi

Decided On : Aug-01-2019

Appellant : g.s. Agarwal

Respondent : State

Advocate for Def. : Mr. Kunal Kalra

Advocate for Pet/Ap. : Mr. T.S. Ahuja, Mr. Varun S. Ahuja, Mr. Braj Bhushan

Judgement :

* % + IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision:

1. t August, 2019 TEST.CAS. 31/2006 & IA No.8131/2019 (u/O XXXIX R-2A CPC)
G.S. AGARWAL

... Petitioner

STATE Through: Mr. T.S. Ahuja, Mr. Varun S. Ahuja & Mr. Braj Bhushan, Advs.
Versus Through: Mr. Kunal Kalra, Adv. for R-5. Respondent CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW1 The petitioner, as the named
executor in the document dated 17th October, 2001 purporting to be the validly
executed Will of the deceased Sitaram Surekha who died at Delhi on 30th
September, 2003, seeks probate thereof as the validly executed last Will of the
deceased Sitaram Surekha and in the alternative, seeks letters of administration
with copy annexed of the document dated 17th October, 2001 as the validly
executed last Will of the deceased Sitaram Surekha with respect to the savings

bank account no.528-1-013093-5 with Standard Chartered Bank (SCB), South Extension, Part-II, New Delhi in the name of the deceased.

2. The petition came up first before this Court on 29th May, 2006 and vide order dated 30th May, 2006, observing that the petition had been filed only as regards the money in the savings bank account of the deceased, notice of the petition was ordered to be issued to the State and to the close relatives of the deceased disclosed in the petition Test.Cas.31/2006 Page 1 of 14 and citation also ordered to be published. The order dated 18th September, 2006 records that the citation had been published.

3. The petition discloses (i) Krishan Kumar Surekha (respondent no.2), (ii) Raj Kumar Surekha (respondent no.3), (iii) Vishnu Kumar Surekha (respondent no.4), (iii) Chakradhari Surekha (respondent no.5), (iv) Veena Bai (respondent no.6), being the sons and daughter respectively of deceased Sitaram Surekha, (v) Prem Lata Surekha (respondent no.7) being the daughter-in-law of the deceased and wife of respondent no.4 Vishnu Surekha, (vi) Navneet Kumar Surekha (respondent no.8) being the grandson of the deceased and son of respondent no.4 Vishnu Kumar Surekha; and, (vii) Mangala Bai and Aruna Bai (respondents no.9 and

10) being the daughters of the deceased, as the close relatives of the deceased.

4. The order dated 15th March, 2007 records the statement of the respondent no.4 Vishnu Kumar Surekha and respondents no.7 to 10 Prem Lata Surekha, Navneet Kumar Surekha, Mangala Bai and Aruna Bai, that they were not opposing the petition. The order dated 30th August, 2007 records that objections had been filed by respondent no.2 Krishan Kumar Surekha. The counsel for the respondent no.5 Chakradhari Surekha, who alone appears today, states that though respondent no.2 Krishan Kumar Surekha and respondent no.3 Raj Kumar Surekha had filed objections but after they died, their legal heirs did not pursue the objections and now only the respondent no.5 Chakradhari Surekha is contesting the petition. Test.Cas.31/2006 Page 2 of 14 5. The counsel for the respondent no.5 Chakradhari Surekha draws attention to IA No.8131/2019 filed under Order XXXIX Rule 2A CPC. It is stated that the petitioner, as executor, has sought probate / Letters of Administration only with respect to the monies lying in the savings bank

account of the deceased Sitaram Surekha with SCB; vide order dated 1st August, 2011, the statement of the petitioner was recorded that the petitioner till then had not created any third party interest in respect of the estate of the deceased Sitaram Surekha and petitioner would not create any third party interest in respect of the estate of the deceased Sitaram Surekha till the disposal of the matter and the petitioner was ordered to be bound by the said statement. Attention is also invited to the order dated 25th January, 2011 whereby the petitioner was directed to file the list of the entire estate of the deceased. It is argued, that the order dated 1st August, 2011 is with respect to the entire estate and not with respect only to the monies in the account of the deceased with the SCB. It is further contended that petitioner has violated the order dated 1st August, 2011 because the deceased Sitaram Surekha had substantial shareholding in Jotindra Steels & Tubes Ltd. and which company owns a property at Faridabad and public notice has been issued, of sale of flats being constructed on the said property.

6. On enquiry, it is stated that the public notice has been brought out by Jotindra Steels & Tubes Ltd., in which the deceased was a Director. It is further informed that the respondent no.4 Vishnu Kumar Surekha along with his wife respondent No.7 and son respondent No.8 are the sole beneficiaries under the alleged Will. Test.Cas.31/2006 Page 3 of 14 7. On the aforesaid arguments, no case of violation of the order by the petitioner is made out. Jotindra Steels & Tubes Ltd. is not a party to this petition and is a separate legal entity. There was no order against it and there is no plea that the petitioner, as executor of the Will of the deceased, has any control or command over the affairs of Jotindra Steels & Tubes Ltd. Moreover, the shareholders of a company have a distinct title from the company and until the shares of Jotindra Steels & Tubes Ltd. are disclosed to be forming part of the estate of the deceased Sitaram Surekha, there can be no order against it. There is no plea that the shares in Jotindra Steels & Tubes Ltd. have been dealt with by the petitioner.

8. 9. IA No.8131/2019 is thus misconceived and is dismissed. I have perused the affidavit by way of examination-in-chief of Shiv Kumar Yadav examined as PW2 and on which affidavit Ex.PW2/A has been put. The said witness, in his affidavit by way of examination-in-chief, has deposed that (i) the deceased Sitaram Surekha

had executed a Will dated 17th October, 2001 in his presence and he was one of the attesting witnesses to the same; (ii) he had signed the Will as a witness at the request of deceased Sitaram Surekha who had admitted the same to be his last Will; (iii) first, deceased Sitaram Surekha put his signatures on the Will in his presence and after that he signed the Will as an attesting witness and thereafter Mr. Naresh Gupta, Advocate had put his signatures on the said Will; and, (iv) all of them had signed in the presence of each other. Test.Cas.31/2006 Page 4 of 14

10. The said witness, when appeared before the Joint Registrar on 30th May, 2016, besides tendering his affidavit by way of examination-in-chief in evidence, also referred to the original Will on the Court record and on which Ex.PW had already been put.

11. The original Will is not found in the file and the Court Master informs the same to be lying in a sealed cover and which has not been sent to this Court. The sealed cover has been called for and the seal broken and the original Will perused.

12. PW2 Shiv Kumar Yadav, in his examination-in-chief, also put points A and B, identifying his signatures on the Will and also identified the endorsement from point C to C1 under his signatures at point A to be in his handwriting.

13. The cross-examination by the counsel for the sole contesting respondent no.5 Chakradhari Surekha of the said PW2 is only to the following effect: The endorsement at point X to X1, just below the endorsement C to C1 on Ex.PW1/2, is not in my handwriting. Mr. Naresh Gupta had signed Ex.PW

as a witness in my presence. I have signed at point A & B in Ex.PW1/2, at two different places at concerned Sub-Registrar Office. Mr. Sitaram Surekha had signed on Ex.PW

in my presence. I know that he could sign in English language. It is wrong to suggest that Mr. Sitaram Surekha did not know English at all. It is wrong to suggest that Mr. Sitaram Surekha did not even know how to write in Hindi language. It is further wrong to suggest that somebody else impersonated Mr. Sitaram Surekha and fraudulently got the Will Ex.PW

prepared. All the signatures etc. Test.Cas.31/2006 Page 5 of 14 on Ex.PW

were made at Sub-Registrar office and not at home of Mr. Sitaram Surekha. 14.

The original Will taken out from the sealed cover is found to be registered, with point B, during the examination-in-chief of PW2, having been put on the signature of PW2 under his thumb impression put on the reverse side of page 1 of the Will, at the time of registration thereof.

15. The Point X to X1 in the cross examination of PW2 pertain to the driving licence number of PW2.

16. In the face of the aforesaid limited cross-examination, I have enquired from the counsel for the sole contesting respondent no.5 Chakradhari Surekha as to how it can be contended that the document Ex.PW has not been proved as the validly executed last Will of the deceased Sitaram Surekha.

17. The counsel for the sole contesting respondent no.5 Chakradhari Surekha has contended that, (i) though probate / Letters of Administration is sought with respect to monies in the bank account only, but by taking advantage of this judgment, the beneficiary under the Will will claim right over the entire estate; (ii) the Will is exclusively in favour of respondent no.4, his wife respondent No.7 and his son respondent No.8 and deprives the other sons of the deceased of any share in the estate; and, (iii) the Will has been got prepared by the respondent no.4 by practicing fraud.

18. As far as the second of the aforesaid arguments is concerned, the same goes against the grain of making of Will. A Will is made Test.Cas.31/2006 Page 6 of 14 only when the testator does not intend his estate to be dealt with in a manner as would be dealt with under the law of the succession, in the absence of the Will. The whole purpose of making a Will is to either deprive some of the heirs, who in the event of intestacy would get the equal share as the others, or to distribute the estate unequally between the heirs. Thus, the mere fact that the Will is exclusively in favour of one of the sons of the deceased and his wife and son, is no argument per se for challenging the Will. It has been held in *Rabindranath Mukherjee Vs. Panchanan Banerjee* (1995) 4 SCC459 *Ramabai Padmakar Patil Vs. Rukminibai Vishnu Vekhande* (2003) 8 SCC537 *Uma Devi Nambiar Vs. T.C. Sidhan* (2004) 2 SCC321 and *Mathew Jacob Vs. Salestine Jacob* AIR1998 Del 390 that (i) the very

idea of bequeathing the property by way of a Will is to deprive other natural heirs and is permissible in law; (ii) a Will is executed to alter the mode of succession and by the very nature of things it is bound to result in reduction or deprivation of the share of the natural heir; and, (iii) the fact that natural heirs have been excluded, by itself, without anything more, cannot be held to be a suspicious circumstance specially in a case where the bequest has been made in favour of an offspring.

19. As far as the first contention is concerned, the law vests a discretion in the petitioner to claim probate / Letters of Administration for administration of a part of the estate only, qua which need for Letters of Administration is felt and does not compel the petitioner to seek probate / Letters of Administration with respect to even that part of the estate, which in accordance with the Will, has already been Test.Cas.31/2006 Page 7 of 14 distributed and / or vested in the beneficiary. I may mention that as far as Delhi is concerned, a probate or Letters of Administration is not necessary for claiming/asserting title as an heir or under the Will. Moreover, the same does not constitute a challenge to the document dated 17th October, 2011 as the validly executed last Will of the deceased and is an issue which concerns only the payment of stamp duty on the probate / Letters of Administration, if ultimately issued.

20. I have enquired from the counsel for the respondent no.5, whether there is any law or provision of the Indian Succession Act, 1925, which bars a probate/Letters of Administration being sought with respect to only part of the estate bequeathed under a Will.

21. The counsel for the respondent no.5 Chakradhari Surekha, without citing any provision of law, draws attention to order dated 24th May, 2010 in this proceeding, particularly to paragraphs 4 and 5 thereof. However a reading of the entire order shows the Court to have not determined the issue and in fact paragraph 7 of the order clearly records that expression of opinion in the earlier paragraphs of the order was not final and will have no bearing on the merits of the case.

22. I find this Court to have, as far back as in Mary Assumption Trinidad v. Vincent Manuel Trinidad MANU/DE/0025/1975, though in the context of grant of

probate or Letters of Administration by the District Judge whose jurisdiction is confined to the estate within his jurisdiction, to have held (i) that though when a litigant comes to a Court, he must ordinarily seek the entire relief to which he is entitled on a particular cause of action and ordinarily a petition for grant of Letters of Administration or probate must be in respect of the entire estate but there are well recognised exceptions to this rule; (ii) one such exception is contained in Section 232 of the Indian Succession Act which enables Letters of Administration to be sought of the whole estate or of so much thereof as may be unadministered; (iii) some of the other exceptions are set out in Section 237 onward, which deal with limited grants; (iv) similarly, where part of the estate is situated outside the jurisdiction of the District Judge which has made the grant, the same would also be considered as an exception; (v) therefore it follows that merely because grant sought or made is confined to the property within the jurisdiction and omits from consideration, deliberately or otherwise, property situated outside the jurisdiction, would not oust the jurisdiction to make the grant and would not make the petition/grant incompetent. Mention in this regard may also be made of *Veronica Mary Alison Das Vs. Nil* MANU/KA/0319/1990 and *K.M Varghese Vs. K.M Oommen* AIR1994 Ker 85 (DB). This Court again, in *Rajesh Sharma Vs. Krishan Kumar Sharma* MANU/DE/8151/2007 held it to be well settled that the Court is not totally devoid of jurisdiction in the matter of granting probate, even if the entire property scheduled in the Will is not included in the application. I have also in *Narender Sen Ahuja Vs. State* MANU/DE/5273/2017 held that the Court is not totally devoid of jurisdiction in the matter of granting Letters of Administration, even if the entire property scheduled in the Will is not included in the petition. Test.Cas.31/2006 Page 9 of 14 23. Moreover, the counsel for the respondent no.5 Chakradhari Surekha, during his arguments has contended that the respondent no.5 Chakradhari Surekha has already filed a suit for partition of the estate. However now it is stated that the suit has been withdrawn with liberty to file afresh but no fresh suit has been filed.

24. The counsel for the respondent no.5 Chakradhari Surekha has also argued, that (i) the respondent no.5 Chakradhari Surekha, in his affidavit by way of examination-in-chief, has deposed that the witnesses to the Will are close relatives and friends of respondent no.4 Vishnu Kumar Surekha; (ii) the deceased Sitaram

Surekha was not keeping good health at the relevant time; (iii) the signatures on different pages of the Will are at different places; and, (iv) the Will does not give any reason whatsoever for bequest in favour of the respondent no.4, his wife and son only and for depriving all the other sons of any share in the estate.

25. The fact of the matter remains that when the attesting witness to the Will was called to the witness box, the counsel for the respondent no.5 Chakradhari Surekha, who alone cross-examined him, did not cross-examine him on what is today suggested. Without the respondent no.5 Chakradhari Surekha putting all the said pleas to the attesting witness who was concerned therewith, no credence can be given to the deposition to the said effect by the respondent no.5 Chakradhari Surekha in his examination-in-chief, even if unrebutted in cross-examination. It may also be noted, that besides the witness who has been examined as PW2, the other witness to the document is Mr. Test.Cas.31/2006 Page 10 of 14 Naresh Gupta, Advocate who is a well-known Advocate specializing in deed writing in Delhi. It is not stated as to how Mr. Naresh Gupta, Advocate was related to the deceased. Moreover, the Will is of 17th October, 2001 and by which time the rules of registration of documents in Delhi compulsorily required the photograph of the executant of the document to be affixed on the document and the Will Ex.PW bears the photograph as well as particulars of identification document of the maker thereof i.e. of the deceased Sitaram Surekha and it is not the contention that the photograph is not of the deceased Sitaram Surekha.

26. Though the counsel for the respondent no.5 Chakradhari Surekha has referred to *Bharpur Singh Vs. Shamsheer Singh* AIR 2009 SC1766 to contend that merely because the Will is registered, is no ground to not prove the Will, the same would not apply inasmuch as Ex.PW in the present case is found to have been proved by PW2.

27. As far as the argument, that the document dated 17th October, 2001 does not give any reason for the bequest made by the deceased, exclusively to the respondent no.4 Vishnu Kumar Surekha, his wife and son, is concerned, Ex.PW contains a recital that the daughters of the deceased were married and well-settled in life and the deceased had already spent sufficient amount on their education

and marriages and given them enough from time to time thereafter. It is also recited in the Will that the deceased had also given enough money from time to time to his three sons Krishan Kumar Surekha, Raj Kumar Surekha and Chakradhari Surekha and they are also well placed in life and for which reason the deceased did not desire to give anything to his said sons and daughters.

28. The Court cannot go into the length or width of the reasons given by the testator for discriminating between his heirs and in fact the law does not even demand that for a Will in favour of one of the heirs only to be valid, it must recite the reasons therefor.

29. The counsel for the respondent no.5 has also argued that the document Ex.PW is incomplete, because it does not list out the entire estate.

30. The said argument again suffers from a fallacy that testator is required to spell out his entire estate in the document. There is no such requirement. Even without spelling out the particulars of the estate, mere bequeathing of the entire estate, whatsoever and wheresoever it may be, in favour of one or more persons, is sufficient. The Indian Succession Act, in Chapter VI titled Of the Construction of Wills as well as in Chapter VII titled Of Void Bequests, Chapter IX titled Of Onerous Bequests, and in Chapter X titled Of Contingent Bequests, makes detailed provisions as to the making and interpretation / construction of Wills and nowhere requires, for the document to qualify as Will, to spell out the estate. A Will, without specifying estate bequeathed, does not become uncertain. Section 89 makes a Will or bequest thereunder uncertain and consequently void, only if not expressive of any definite intention. A Will bequeathing entire estate to another, discloses definite intention. Mention may be made of *Lachhman Singh Vs. Raja Ram Singh* (1999) 3 SCC517 The principle is, to lean against intestacy. Reference may be made to *Ittiamam Vs. Cherichi @ Padmini* (2010) 8 SCC612 31. I may also record that the enquiry in this proceeding is confined to determining whether the document claimed to be Will is proved to have been executed by the deceased in accordance with law i.e. Section 68 of the

Indian Succession Act, and once that is proved and no other suspicious consideration surrounding the document are proved, the probate Court is required to grant probate / Letters of Administration without going into the question of title of the estate. Reference in this regard may be made to Chiranjilal Shrilal Goenka Vs. Jasjit Singh (1993) 2 SCC507 Delhi Development Authority Vs. Vijaya C. Gurshaney (2003) 7 SCC301 Krishna Kumar Birla Vs. Rajendra Singh Lodha (2008) 4 SCC300 Rakesh Kumar Juneja Vs. State of Delhi 2017 SCC OnLine Del 12484, Sarla Gupta Vs. The State 2017 SCC OnLine Del12689 and Jatinder Singh Bhatia Vs. State AIR2018 Del 197.

32. Thus, none of the arguments of the counsel for the respondent no.5 come in the way of the reliefs sought being granted.

33. The petition is allowed and disposed of.

34. Probate is ordered to be issued to the petitioner, of the document dated 17th October, 2001 (proved as Ex.PW1/2, as the validly executed Will of the deceased Sitaram Surekha), confined to the monies lying in the name of the deceased Sitaram Surekha in savings account bearing No.528-1-013093-5 with SCB, South Test.Cas.31/2006 Page 13 of 14 Extension, Part-II, New Delhi, (stated to be kept in a fixed deposit vide order dated 4th November, 2015), with document dated 17th October, 2001 annexed thereto as the validly executed last Will of deceased Sitaram Surekha.

35. Needless to state, the aforesaid is subject to the petitioner furnishing the requisite stamp duty and also an administration bond with one security in the like amount of the value of the estate with respect to which probate is issued. The petition is disposed of. AUGUST01 2019 gsr.. (corrected and released on 31st August,2019) RAJIV SAHAI ENDLAW, J.

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