

**P.P. Singh and Another Vs. P.P. Singh and Another**

**P.P. Singh and Another Vs. P.P. Singh and Another**

**SooperKanoon Citation :** [sooperkanoon.com/39603](http://sooperkanoon.com/39603)

**Court :** Delhi

**Decided On :** Feb-03-2015

**Judge :** Jayant Nath

**Appellant :** P.P. Singh and Another

**Respondent :** P.P. Singh and Another

**Judgement :**

\$~A-1 \* IN THE HIGH COURT OF DELHI AT NEW DELHI % + Judgement Reserved on :

08. 01.2015 Judgment pronounced on :

03. 02.2015 TEST.CAS. 95/2012 P.P. SINGH AND ANOTHER ..... Petitioner Through Mr.Chandra Shekhar, Adv. Versus STATE & ANOTHER Through ..... Respondent Ms.Anindita Barman, Adv. for Mr.Sachin Chopra, Adv. for R-1 Mr.S.B.Tripathi, Adv. for R-2 CORAM: HON'BLE MR. JUSTICE JAYANT NATH JAYANT NATH, J.

I.A. No.269/2015 (u/O7R11CPC) in Test Case. No.95/2012 1. The present application is filed under Order VII Rule 11 CPC for dismissal of the probate petition.

2. The petitioner has filed the present petition under Section 276 of the Indian Succession Act for grant of letters of administration in favour of the petitioners in

respect of the Will dated 25.03.2011 said to be signed and executed by the Testator Col. Udai Pratap Singh.

3. The present application is filed by respondent No.2/objector stating that she is the legally wedded wife of the deceased and the only class-I heir. Reliance is placed on Section 222 of the Indian Succession Act which provides that a probate can only be granted to an executor appointed by the Will. It is urged that the probate petition has not been filed by an executor appointed by the Will and has been filed by Sh. P.P. Singh and Lt. Col.Abhimanyu Pratap Singh who are the alleged beneficiaries of the Will in question and hence is not maintainable. On these grounds, the applicant has filed the present application seeking dismissal of the probate petition. Reliance is placed on the judgment of this High Court in the case of Test. Cas. No.98/2008 decided on 16.04.2012 titled as Gopal Krishan s/o Dr. Ishwar Sahai Vs. State Of Delhi & Ors.

4. A perusal of the order sheets shows that the applicant is habitual of filing one application after the other. Earlier I.A No.17278/2013 was also filed by the applicant under Order VII Rule 11 CPC for dismissal of the petition. In the course of arguments on that application, learned counsel for respondent No.2 had confined his arguments to the submission that the present probate petition is liable to be rejected as the petitioner had undervalued the property and not paid ad valorem court fees on the market value of the assets existing in the name of the testator. This court on 29.10.2013 dismissed the application inasmuch as when a petition for grant of probate or letters of administration is filed that would not be the appropriate stage to file court fees.

5. This is yet another application filed under Order VII and Rule 11 CPC.

6. Section 222 of the Indian Succession Act, reads as under:

222. Probate only to appointed executor.- (i) Probate shall be granted only to an executor appointed by the Will. (ii) The appointment may be expressed or by necessary implication.

7. Reference may also be had to Section 232 of the Indian Succession Act which reads as under:

232. Grant of administration of universal or residuary legatees.-When- (i) the deceased has made a Will, but has not appointed an executor, or (ii) the deceased has appointed an executor who is legally incapable or refuses to act, or who has died before the testator or before he has proved the Will, or (iii) the executor dies after having proved the will, but before he has administered all the estate of the deceased, a universal or a residuary legatee may be admitted to prove the Will, and letters of administration with the Will annexed may be granted to him of the whole estate, or of so much thereof as may be unadministered.

8. In the course of arguments, learned counsel for the applicant accepted that the petitioners can file a petition for grant of letters of administration with the Will annexed in view of Section 232 of the Act but in view of 222 of the Act it is urged that the present petition is liable to be dismissed.

9. A perusal of the probate petition shows that though it purports to be under Section 276 of the Indian Succession Act which deals with petition for probate, the prayer clause states that the petitioners be granted letters of administration in respect of the will dated 25.03.2011 of the testator. A perusal of the Will shows that the immovable properties are bequeathed to the petitioners who have to jointly take decisions in respect of the management, maintenance, etc. of the same.

10. The prayer clause of the petition reads as follows:

In the light of the aforesaid facts and circumstances, it is, therefore, most respectfully prayed that the Honble Court may kindly be pleased to grant the letters of administration in favour of the petitioners in respect of the Will dated 25.03.11 signed and executed by the deceased Col.Udai Pratap Singh and such further relief/order(s) as may be deemed just and proper in the interest of justice.

It is clearly a petition filed for grant of letter of administration with the will annexed.

11. In the light of the above, in my opinion, there is no infirmity in the petition filed. The Will does not name any executor. In view of Section 232 of the Act, the petition for letters of administration with the Will annexed was the appropriate petition to be filed. Petitioners have essentially sought the same relief in the present petition.

12. Even otherwise, even if a petition for probate had been filed, the Supreme Court in the case of Shambhu Prasad Agarwal & Ors. vs. Bholu Ram Agarwal, 2000 (9) SCC714 held that it could be converted into a petition for letters of administration. Para 5 of the said judgment reads as follows:

5. We find that it is not disputed that Matadin Agarwal was a legatee under the will. It is true that Matadin Agarwal ought to have applied for issue of letters of administration and not for probate. However, this did not debar his heirs to get the probate petition amended. The trial court rejected both the application of the appellants on the ground that since the probate petition filed by the legatee related to his personal right, therefore, no right accrued to the appellants for their substitution in his place. This view, according to us, is not correct. Matadin Agarwal, as stated above, was a legatee and not an executor under the will. It is true that where an executor dies, his heirs cannot be substituted because the executor possessed personal right, but this is not applicable whether the heirs of a legatee apply for issue of letters of administration. It is not disputed that today the appellant can file a petition for issue of letter of administration. Since considerable time has elapsed, we feel that the interest of justice demands that the proceedings should come to an end as early as possible and we should not dismiss this appeal merely on highly technical ground.

13. In the case of Gopal Krishan s/o Dr. Ishwar Sahai Vs. State Of Delhi & Ors. (supra) this court held that a petition for probate does not lie and that the pending petition could be converted into petition for letters of administration with the Will annexed.

14. Accordingly, there is no merit in the present application. The same is dismissed with costs. JAYANT NATH, J FEBRUARY03 2015 rb