

Sri Ram Sharma Vs. State

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Court : Delhi

Decided On : Jan-06-2005

Reported in : 117(2005)DLT174

Judge : Pradeep Nandrajog, J.

Acts : [Indian Succession Act, 1925](#) - Sections 276 and 291

Appeal No. : PR No. 59/1983

Appellant : Sri Ram Sharma

Respondent : State

Advocate for Def. : Rajat Navet, Adv. for ; R.S. Bakshi, Adv. for Objector No. 2

Advocate for Pet/Ap. : J.K. Seth, Sr. Adv. and; Shalini Kapoor, Adv

Disposition : Petition allowed

Judgement :

Pradeep Nandrajog, J.

1. Late Smt. Bhagwati Devi Gaur died on 17.1.1981. Her husband Jagan Nath Gaur had predeceased her. She was survived by 2 sons, Satpal and Davinder Pal, and 2 daughters, Radha Rani and Satyawati. A third son, Rajwant Pal had predeceased her and was unmarried. Battle to the estate of late Smt. Bhagwati

Devi was being fought between her son Davinder Pal, her grandson Harmesh Pal and her daughter Radha Rani. Harmesh Pal is the son of Satpal.

2. Satpal died on 2.3.1982. Davinder Pal died on 6.11.1999 and Radha Rani died on 1.1.1992.

3. On death of late Smt. Bhagwati Devi, present petition was filed on 14.4.1981 by Shri Sri Ram Sharma for probate of the Will dated 19.5.1978 allegedly executed by late Smt. Bhagwati Devi. The petition was registered as probate case No. 115/81. It was filed in the court of the District Judge Delhi.

4. As per the petition, petitioner claims to be the real brother of the deceased and was named as the executor of the Will dated 19.5.1978. The Will was stated to be registered on 25.5.1978, with the Sub Registrar, Kashmere Gate, Delhi vide registration No. 1535, Addl. Book No. III, Vol. 95 at pages 142 to 143.

5. The Will dated 19.5.1978 purports to be witnessed by Shri Krishan Gopal, nephew of the deceased and Shri C.B. Anand (Advocate).

6. Order sheet of the case would reveal that Satpal, father of Harmesh Pal was served for 17.7.1981 and he did not file any objection to the grant of probate as prayer for. Objections dated 13.10.1988 were filed only by Radha Rani. On 13.2.1984 objections were filed by Harmesh Pal.

7. On 5.10.1982, Harmesh Pal filed a petition under Section 276 of the [Indian Succession Act, 1925](#) for probate of the Will alleged to have been executed by the deceased on 14.5.1979. Davinder Pal filed objections to the said petition.

8. Harmesh Pal filed an application being is No. 7899/2004. He withdrew his petition seeking probate of the Will dated 14.5.1979. He admitted that Will dated 19.5.1978 was the last and valid Will executed by late Smt. Bhagwati Devi Gaur. He appeared in court on 25.11.2004. His statement was recorded. On basis of his statement, probate petition No. 19/1983 was dismissed as withdrawn.

9. Shri Sri Ram Sharma died during the pendency of the proceedings. is No. 1282/2001 was filed by Shri Vipin Gaur s/o Davinder Pal (grandson of the

deceased and a beneficiary under the Will dated 19.5.1978) for substitution in place of Shri Sri Ram Sharma. Vide order dated 7.11.2002, I.A. No. 1282/01 was allowed.

10. On death of Smt. Radha Rani, her sons Ramesh Kumar and Rakesh Kumar and daughter Neelam Kansal were brought on record. Ms. Kamlesh Mahajan Advocate, appeared for said legal heirs, but since 30.9.1997 none has appeared for said persons.

11. Mr. J.K. Seth, learned senior counsel appearing for the petitioner stated that legal heirs of late Smt. Radha Rani are not interested in contesting the present proceedings and for that reason, none is appearing for them.

12. In her objections dated 13.10.1981, Radha Rani has stated that the deceased did not execute any valid Will during her lifetime. That the deceased was uneducated and would not understand what the document was. That the Will was a forged and fabricated document. That the deceased could not bequeath the agency of Indane Gas as it was allotted to her on demise of her son Capt. Rajwant Pal Gaur during Indo-Pak war of 1965.

13. I need not note the objections filed by Harmesh Pal inasmuch as, he having set up a subsequent Will dated 14.5.1979 and having sought probate thereof by and under Probate Petition No. 19/83, withdrew said petition and made a statement on 25.11.2004 accepting the Will dated 19.5.1978.

14. On 21.10.1981, 4 issues were framed in the present proceedings. Issues being:-

(i) Whether Smt. Bhagwanti Devi, deceased made her last Will and testament dated 19.5.1978 in favor of the petitioner while possessed of sound disposing mind?

(ii) Whether the property (Distributorship Agency of Gas), subject matter of Will in question is heritable?

(iii) Whether matter posed in issue No. 2 can be determined by this court in probate proceedings?

(iv) Relief.

15. Issue No. 3, being legal was decided vide order dated 23.1.1982. It was held that probate proceedings being concerned only with issue of genuineness or otherwise of a Will, question regarding heritability of gas agency could not be gone into in the present proceedings. Issue No. 3 was held against the objectors. Accordingly, only issue which survived for adjudication is issue No. 1 and 4.

16. Will dated 19.5.1978 excludes both daughters from inheritance, a usual feature to be found in Wills executed in this country. Estate of the deceased has been bequeathed between the 2 sons, Davinder Pal and Satpal and their families. Family of Davinder Pal gets the following:

- (a) 1/2 share in agricultural land in village Chahlan, Punjab.
- (b) Flat No. B-3B/44B, Janakpuri, Delhi.
- (c) Plot (Sandhuwali) in village Chahlan.
- (d) Balance in account No. 1341, State Bank of Patiala, Samrala, Punjab.
- (e) Balance in account No. 7156, Bank of India, Patel Nagar, Delhi.
- (f) All amounts in all joint accounts with Davinder Pal.
- (g) Gas Agency.

17. Following stands bequeathed to the other son Satpal and his family:

- (a) 1/2 share in agricultural land in village Chahlan, Punjab.
- (b) Double storey house.(No. not given, but as stated at the bar, house in the village).
- (c) Neemwali land (Vacant plot).

18. Two witnesses have been examined by the petitioner to prove the Will dated 19.5.1978. PW-1, Shri Siri Ram Sharma, brother of the deceased stated that deceased resided at B-3B/44B Janakpuri till she died and that she remained in sound disposing mind till her death. He stated that the Will in question was found in the trunk of the deceased after her death. PW-2, Shri Krishan Gopal, son of the real brother of the deceased deposed that he was an attesting witness to the Will. He stated that a few days prior to the execution of the Will, deceased had come to his house and at her asking he took her to the house of Shri C.B. Anand, Advocate. Draft of the Will was prepared under instructions of the deceased. He got the fair copy typed in his office. He and the deceased went to the office of Shri C.B. Anand who checked the fair copy of the Will with the draft. Contents were explained to the deceased in hindi. The deceased affixed her thumb impression on the Will at point A in his presence and presence of Shri C.B. Anand. Immediately thereafter, he and Shri C.B. Anand signed the Will at points B and C respectively. The Will was subsequently registered. He stated that deceased had a Will with her which she had shown to the Advocate. In cross-examination, he deposed that deceased was illiterate. He stated that the sub registrar enquired from the deceased whether she was aware as to what had been written in the document and she had affirmed the same.

19. Sh. C.B. Anand was examined as a court witness. He stated that he had prepared the Will in question as per instructions of the deceased. Krishan Gopal (PW-2) had got fair copy typed. He was an attesting witness to the Will. He was present when the Will was registered. Registrar enquired from the deceased whether she was aware what she was executing. He denied that the Will was brought by Davinder Pal and Krishan Gopal and he only got it registered.

20. Davinder Pal Gaur, examined as DPW-1 deposed that his mother had executed the Will in his presence.

21. I need not note the evidence led pertaining to the alleged Will dated 14.5.1979 for the reason that said Will was set up by Harmesh Pal who withdrew claim under said Will and accepted the Will dated 19.5.1978. Smt. Radha Rani, the other objector did not rely upon any Will as her case was that her mother did not

execute any Will.

22. Vide order dated 25.11.1985, the two Wills dated 19.5.1978, 14.5.1979 and another Will dated 9.10.1976 were sent for forensic investigation to CFSL. Report was submitted by Sh. P.S. Nayar, Senior Scientific Officer. He was also examined as a court witness. His evidence as also the report is to the effect that the Will in question bears the thumb impression of the deceased at the point of execution. No categorical opinion is forthcoming qua the thumb impression of the deceased at the time of registration.

23. Though, Harmesh Pal has withdrawn claim under Will dated 14.5.1979, allegedly executed by the deceased in Punjab, for record, I may note that testimony of DPW-2 and DPW-3 shows that deceased was at Cochin from 7.5.1979 to June, 1979.

24. The Will in question is a registered Will. No defect in registration has been brought out. Endorsement by the registrar would prima facie show a sound disposing mind of the testator. The Will has been attested by 2 witnesses, one being the nephew of the deceased and the other an Advocate. The two have withstood cross-examination. Minor discrepancies here or there, the two have corroborated each other. I see no reason to disbelieve the two witnesses.

25. The deceased has ignored both daughters. It may be unfortunate, but in India preference for the male child is a reality. The deceased has certainly given a little more to the family of Davinder Pal but it has to be noted that she was residing with him and it was he who was looking after the mother. Burden of proving that the Will was executed under undue influence is on the party who alleges the same. Evidence shows that thrust of opposite party, namely Harmesh Pal was to prove that Will dated 14.5.1979 was the last testamentary disposition of the deceased. Said Will has been abandoned.

26. Evidence on record establishes that the deceased executed the Will dated 19.5.1978 in a sound state of mind and conscious of her acts. There was no undue influence.

27. Petition is allowed. Petitioner Vipin Gaur is hereby declared as being entitled to grant of Letters of Administration with Will dated 19.5.1978 annexed.

28. Registry to complete the formalities on requisite stamp papers being filed for drawing up the Letters of Administration with Will annexed. Petitioner to comply with Section 291 of the [Indian Succession Act, 1925](#).

29. No costs.

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