

H.P.S. Chawla Vs. the State

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Court : Delhi

Decided On : Feb-17-1986

Reported in : ILR1986Delhi169; 1986RLR213

Judge : M.K. Chawla, J.

Acts : [Succession Act, 1925](#) - Sections 232

Appeal No. : Probate Case Appeal No. 35 of 1985

Appellant : H.P.S. Chawla

Respondent : The State

Advocate for Pet/Ap. : P.N. Lekhi,; M.K. Garg,; Madan Bhatia,;

Judgement :

M.K. Chawla, J.

(1) Shri H. P. S. Chawla is one of the brothers of the deceased, Mrs. Raj Chawla Sahni. She died at New Delhi on 5-6-1984 leaving behind a Will dated 13-5-1984. In a petition under Section 232 of the Indian Succession Act for the grant of letters of Administration with the will annexed, the case set up by Shri H. P. S. Chawla, petitioner is that in her will Smt. Raj Chawla Sahni does not name any executor but the petitioner being one of the legatees is entitled to file the present petition. The estate duty payable in respect of the estate of Ms. Raj Chawla Sahni is still to

be filed and the petitioner undertakes to make such payments from and out of the estate, as may be found due by the department on completion of the estate duty assessment. Shri Joginder Nath Sahni, the husband of the deceased has already instituted a Probate case No. 3811984, though pending in this court is not maintainable. The persons who would have been entitled to the estate of the deceased in the event of intestate succession and the others to whom the notice is necessary are given in the petition. Hence the petition.

(2) Immediately on the service of the summons of the petition. respondent No. 1. Shri T. P. S. Chawla filed the reply . and raised a number of preliminary objections to the maintainability of the petition and the appointment of the petitioner as executor. One of the preliminary objection? read as under :-

'THAT it further appears that only a photocopy of the will dated 13th May, 1984 made by late Ms. Raj Chawla Sahni has been filed with the petition. It was incumbent on the petitioner to file the original will Along with the petition, and for this further reason the petition cannot be entertained.'

I do not propose to incorporate the other grounds taken by respondent No. 1 by way of preliminary objections, as well as on merits for the dismissal of the petition, as they are not relevant for the purpose of deciding the above said objection to the maintainability of the present petition.

(3) Respondent No. 7, Shri Joginder Nath Sahni also opposed the petition by raising a number of preliminary objections as well as on the merits. However, respondents 2, 3 & 5 in their joint written statement admitted the facts stated in the main petition, and raised no objection to the grant of the prayer.

(4) On the pleadings of the parties the following issues were framed :-

1. Whether respondent No. 1 is not the implied executor of the will made by Mrs. Raj Chawla Sahni 2. Whether respondent No. 1 is not the residuary legatee under the said will 3. If issue No. 1 or 2 is decided in favor of respondent No. 1, then, is the present petition maintainable 4. Whether the pendency of the petition for letters of administration filed by Mr. J. N. Sahni being Probate case No. 38-LA of

1984 does not bar the present petition 5. Whether the present petition can be entertained without the original will being filed 6. Whether in view of respondent No. 1 being ready and willing to act as executor/administrator of the estate of the late Ms. Raj Chawla Sahni, the petitioner is entitled to the grant of letters of administration 7. Whether the will made by Mrs. Raj Chawla Sahni did not have an annexure appended to 8. Whether the jewellery left behind by Mrs. Raj, Chawla Sahni is in possession of respondent No. 7 or the petitioner and respondents Nos. 2, 3 and 5 or any one of them 9. Whether the petitioner is a fit and proper person to be entrusted with letters of administration 10. Relief.

Learned counsel for the parties agreed that Issue No. 1 to 7 be treated as preliminary issues and disposed of without recording evidence.

(5) Learned counsel for respondent No. 1, to start with, has laid emphasis for rejection of the petition as the same is not being accompanied by the original will or a complete copy of the same. This objection is the subject matter of Issue Nos. 5 & 7. The contention of the learned counsel for respondent No. 1 is that by virtue of Section 276 of the Indian Succession Act it was mandatory on the part of the petitioner to have annexed the original will Along with the main petition, in the absence of which the petition is not competent and cannot be entertained. Non filing of the original will according to him, is fatal and this defect is not curable. Respondent No. 7, Shri J. N. Sahni not only defined the existence of a validity executed will dated 13-5-1984, but also lend his support to the objection of respondent No. 3. The submission of the learned counsel for the petitioner, on the other hand is that Along with the petition he has filed a photocopy of the will which gives a complete idea of the testator. There being no allegation of the tempering of the will and the respondent No. 1 having acted on the basis of the will cannot come forward and challenge its existence. Under these circumstances. the letters of administration should be issued to the petitioner, as and when, the original will is produced.

(6) In order to appreciate the true scope of the arguments advanced at the Bar one has first to carefully peruse the provisions of Section 276 of the Indian Succession Act which lays down the procedure for filing such like petitions. It says- 276.

Petition for Probate :

'1.Application for probate or for Letters of Administration, with the will annexed, shall be made by a petition distinctly written in English or in the language in ordinary use in proceedings before the Court in which the application is made with the will or in the cases mentioned in Section 237, 238 and 239, a copy, draft, or statement of the contents thereof, annexed and stating-

(A)the time of the testator's death; (b) that the writing annexed is his last will and testament; (c) that it was duly executed; (d) the amount of assets which are likely to come to the petitioner's hands, and (e) when the application is for probate that the petitioner is the executor named in the will.

2..... 3.

(7) This Section lays down the contents of an application for Probate or for Letters of Administration with the will annexed, and the language in which that application should be written. The words 'with the will annexed' appearing in this provision assume importance in case of the non-filing of the original will. The mandatory requirement of this Section is that the petitioner shall Along with the petitioner for probate or letters of Administration file the original will, if he is in actual possession of the same. The only exceptions to the Rule are Sections 237, 238 and 239 of the Indian Succession Act. These sections deal with grant of probate limited in duration. While Section 237 deals with a will which has been lost or misplaced since the testator's death or has been destroyed by no act of the testator in which case probate may be granted, of a copy or draft of the will. limited until the original or a properly authenticated copy of it is produced. The next Section deals with a case where no such draft or copy is available but there is evidence establishing the contents of the will, which has been lost or destroyed. Section 239 provides for a case where the will is in the possession of a person residing out of the State and he has refused or neglected to deliver it up. In such a case, if a copy has been transmitted to the executors and it is necessary in the interest of the estate that probate should be granted without waiting for the arrival of the original, probate may be granted of the copy transmitted, but this probate will be limited until the will or an authenticated copy of it is produced.

(8) In para No. 5 of the petition it is specifically mentioned that the petitioner is entitled to bring the present petition for the grant of Letters of Administration with the will annexed. However, for reasons best known to the petitioner, only a copy of the will has been annexed.

(9) In order to overcome this objection, learned counsel for the petitioner placed reliance on the provisions of Section 240 of the Indian Succession Act, which provides for a case where no will of the deceased is forthcoming, but there is reason to believe that there is a will in existence. According to learned counsel in such cases letters of Administration may be granted, limited until the will or an authenticated copy of it is produced. The submission of the learned counsel is that he is in possession of the original will and would like to produce /prove it during the course of the recording of evidence and E the petition on this account cannot be rejected I am afraid. this provision is of no help to the petitioner. This Section will come into play only where neither the original nor the copy of the will of the deceased is behind filed with the application on one ground or the other, but the Court on the basis of some reliable evidence comes to the conclusion that such a will is in existence. In such a case also letters of Administration may be granted limited, until the will or an authenticated copy of it is produced. The present is a petition under Section 232 of the Indian Succession Act. It is not the case of the petitioner that the original will or a copy of the same is not available. The wording of Section 240 is quite different from Section 232. and is meant to cover different circumstances. At the most this Section can also be considered as another exception to Section 276 of the Indian Succession Act. In this behalf useful reliance can be placed on a judgment reported as-In re : Laurence Claude Levack, : AIR1954 Mad898 . 0) This was the case wherein the provisions of Section 228 and 241 of the Indian Succession Act, qua Section 276 were being considered and interpreted. On consideration of the two provisions the Full Bench was of the view that reading Section 241 Along with Section 228 of the Act. it follows that an attorney or agent of an absent executor can obtain letters of administration without producing the original will, if the will had been proved and deposited in a competent court, and a properly authenticated copy of the will is produced. The Full Bench also observed as under :-

'THE Question then arises whether the Section will not apply because the petitioner in this case is unable to produce Along with his petition the original will. The production of the original will is not incumbent by reason of any provision in Section 241 of the Act, but because of the provision's of Section 276(1) of the Act, which says that an application for probate or for letters of administration with the will annexed shall be made 'with the will' except in cases mentioned in Ss. 237, 238 and 239. These three sections deal with the case of a lost or destroyed will and the case of the will in the possession of a person residing out of the province in which the application for probate is made and who has refused or neglected to deliver it.'

The Full Bench was also of the opinion that though not mentioned in Section 276, a case coming under Section 228 would also be an exception to the general rule in Section 276.

(10) Learned counsel for respondent No. 1 also relied upon an observation appearing at page 309 of Property and Conveyancing Library No. 10 by Williams. Mortimer and Sunnucks on Executors. Administrators & Probate. The relevant portion reads as under :-

'DOCUMENTS TO Be Lodged In every application for probate or letters of administration with the will annexed there must be lodged the Oath, the Inland Revenue account and, unless they are unobtainable, the Original will and any codicils thereto. In certain cases, as shown later, it will be necessary to lodge affidavits and other documents, e.g. a translation of the will in a foreign language.'

(11) The authoritative pronouncement referred to above which fairly and squarely applies to the facts of the present case, makes it clear that it was mandatory on the part of the petitioner to have annexed the original will Along with the present application.

(12) This question can also be looked into from another angle. It may be that in Section 276, it is not mentioned as to whether, the petitioner is required to file the original will, an' authenticated copy of the will or a photocopy of the same, Along with the petition, but by comparison of Sections 228, 237, 238, 239, 240 and 241

with Section 276 it can safely be concluded that the intention of the legislature was that when an application under Section 276 is filed, it must be accompanied with the original will. This inference otherwise appears to be justified. There is no reason or cause turn the applicant to keep 'back the original will, if it is available and is in his possession. This will not only avoid the unnecessary accusation of the other party of its being tempered with, interpolated or used for other purposes with malafide intentions, but will also avoid unnecessary adjournments on the ground that without examining the original will, the respondents will not be able to file the reply. The filing of the original will in fact is to the advantage of all concerned. In view of these circumstances, as at present advised. I hold that the filing of the original will, Along with the petition under Section 276 is a must, and its non-filing is fatal to the maintainability of the petition.

(13) There is yet another aspect to this proposition. In the additional pleas of the written statement of respondent No. 1, it has repeatedly mentioned that Shri H. P. S. Chawla. Mrs. Ram Piari Chawla, Dr. N. P. S. Chawla and Mrs. Nirmal Daniere were aware of the existence of and in fact in possession of the original will with the annexures. It is also mentioned that after repeated attempts a signed copy of the will, and page one of the annexures was delivered to the wife of the petitioner at about 10 A.M. on 15th June, 1984. When asked for the remaining pages of the annexures the petitioner and other respondents. except Mr. J. N. Sahni. agreed to deliver the same some time later. It is the case of respondent No. 1 that the remaining pages of the annexures have yet to see the light of the day.

(14) It is not disputed that the deceased. Mrs Raj Chawla Sahni had annexed some pages to her will.' The following sentence from the copy of the will makes the position clear. It states :

'BESIDES the above I have jewellery which I have not included in the assets mentioned above. I have listed this jewellery as an annexure to this will and have also indicated each piece to whom it has to be given after my demise.'

(15) Admittedly the copy of the will now filed with the petition for the grant of letters of administration do not contain the annexures. Learned counsel for the petitioner tried to cover up this material discrepancy by alleging that Smt. R. P. Chawla was

in possession of only one signed copy of the annexure, which was delivered to the wife of respondent No. 1. They are not in possession of page one or any other pages of the annexures, and as such are not in a position to file the same. Prima facie I am not inclined to agree with this Explanationn. As observed earlier respondent No. I in his reply has reiterated this averment a number of times that the petitioner. Dr. H. P. S. Chawla and Smt. R. P. Chawla were told of the serious consequences of not locating the remaining pages of the annexures, inasmuch as the Portion of the will disposing of the jewellery might become invalid. On this Smt. R. P. Chawla undertook to search for the remaining pages of the annexure and deliver the same to respondent No I. It is also alleged that respondent No. I was informed by Smt. R. P. Chawla that the deceased had left behind three signed copies of the will with annexures.

(16) The petitioner, in the replication, unfortunately did not care to rebut this important averment. The additional pleas run into paras I to 51. The reply of the petitioner to these additional pleas is :

'THE additional pleas are unproved, self serving, and ex parte statements which need no reply. being matter of evidence. The veracity, truth and relevancy of which can only be decided after the matter reaches the evidence stage in the proceedings.'

(17) There is no denial to these specific averment', which must be deemed to have been admitted. The court, under these circumstances, will be justified to draw this inference that the petitioner, for reasons best known to him. has intentionally withheld the annexures to the will. Atleast the petitioner admits the existence of the annexure. the copy of which was admittedly supplied to respondent No. 1. Though at this stage it will riot be possible for this court to hold as to the number of pages of the annexures to the will, but it is apparent that there were some pages of annexures to the will, in which it has been indicated as to which piece of the jewellery, owned by. the deceased, is to be given and to whom, after her demise. These annexures form integral part of the will, without which it cannot be probated or letters of administration issued. The present petition under these circumstances, must be held to have been filed without the original, authenticated or a complete

copy of the will. This fact by itself, to my mind, is a fatal one and under no circumstances the petition can be entertained or adjudicated upon.

(18) After the arguments on the objections were concluded, learned counsel for the petitioner realised the cavity of the situation. In order to cover up the lacune, the petitioner preferred to move an application (I.A. No. 835/1986), for placing on record the original will But as the ill luck would have it, even in his last attempt, the petitioner has slipped and has not been able to recover the lost round. Here again he has failed to file the signed copy/copies of the annexures, without which the will is not complete.

(19) It may be that this Probate case stands consolidated with Probate Case No. 3811984, filed by Shri J. N. Sahni for the grant of Letters of Administration and Suit No. 1821/1984 of Shri H. P. S. Chawla for the partition of the properties left by the deceased and rendition of accounts from respondent No. I, but that fact by itself will not create any bar to dispose of the present preliminary objection to the maintainability of this petition.

(20) In the final analysis, I hold that without the filing of the complete original will the present petition for the grant of letters of administration is not maintainable and is dismissed,