

Dharamvir Sharma Vs. State and ors.

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Court : Delhi

Decided On : Feb-15-2008

Reported in : 148(2008)DLT149

Judge : S. Ravindra Bhat, J.

Acts : [Indian Succession Act, 1925](#) - Sections 228 and 276

Appeal No. : Test. Cas. 26/2005

Appellant : Dharamvir Sharma

Respondent : State and ors.

Advocate for Def. : R.S. Mathur, Adv.

Advocate for Pet/Ap. : S. Ravishankar, Adv

Disposition : Petition allowed

Judgement :

S. Ravindra Bhat, J.

1. This petition under the [Indian Succession Act, 1925](#) seeks grant of letters of Administration concerning the Will of one Shri. Kunwal Kumar Sharma (hereafter 'the testator'), who died on 17th December, 2002. A true copy of the death certificate has been produced with the petition.

2. It is averred in the petition that the testator, at the time of his death was residing at 36, Bilston Lane, Willenhall, West Midlands, WV13 2QB, United Kingdom and had roots in the society. Prior to his demise, the testator executed his last and only will, on 28-8-1991, bequeathing all his movable and immovable properties to the petitioners. It is averred that the will was attested by PA Lowers and J Evans of Rowland Tildesley & Harris Solicitors, New Road Willenhall West Midlands WV 13 2AH UK. The testator had named his wife Ms. Susheel Sharma as sole executrix and trustee of the will; however, she passed away on 17-1-1999 before the death of the testator. In terms of the will, if the widow, Ms. Susheel Sharma did not survive the deceased for 21 days after his death, his properties and estate were to devolve equally in favor of the petitioner, his children.

3. The petitioners aver that Probate was granted in respect of the Will, at their request and on their application, on 15-7-2003 in the High Court of Justice, the District Probate Registry, at Birmingham, UK. They have annexed a true copy of the Probate dated 15-7-2003. The petitioners undertake to pay ad-valorem court fees as may be determined in respect of the property, which is subject matter of the Will; they also undertake to administer the property of the deceased testator, as described by him in the will.

4. The petition is accompanied by an application seeking exemption under Section 228 of the [Indian Succession Act, 1925](#) from the requirement of producing the original will, since it has been probated; instead the petitioners seek liberty to file the copy of the will, attested by their solicitor and notary. The petition also encloses the valuation of the bequest, so far as it concerns the request for administration, i.e UK 33474.11 invested with the State Bank of India, Connaught Place branch, by the testator. The certified copy of the probate along with attested copy of the will were produced subsequently.

5. Notice of the petition was issued; notice to the public at large was also published in the newspaper 'The Statesman' in its Overseas Edition, dated 1-10-2005. However, no response to the notice was received.

6. The petition has been signed by all the petitioners, i.e children of the testator; it is also supported by the affidavit of the first petitioner, one of the sons of the

deceased testator. Section 228 of the [Indian Succession Act, 1925](#), which is the relevant provision, reads as follows:

228. Administration, with copy annexed, of authenticated copy of will proved abroad- When a will has been proved and deposited in a court of competent jurisdiction situated beyond the limits of the State, whether within or beyond the limits of India, and a properly authenticated copy of the will is produced, letters of administration may be granted with a copy of such copy attached.

7. The object of Section 228 is to dispense with the need to produce the original will owing to its deposit in some other court. The order under this provision is not like Section 276; however, it is ancillary to a grant made by a competent court. Before making an order on such application, the court has to satisfy itself that the copy produced before it answers the description in Section 228.

8. In this case, the testator died on 28-8-1991; the original executrix of the will also died in 1999. The petitioners, as residuary legatees, being children, applied for probate before the competent court, i.e the High Court of Justice, the District Probate Registry, at Birmingham; that was granted on 15-7-2003. A copy of the probate, along with a notarized and attested copy of the will has also been produced. The petitioners seek an order under Section 228 as far as it concerns the movable property of the deceased testator located in India, i.e 33474.11 invested with the State Bank of India, Connaught Place branch, New Delhi. The State Bank of India, through its letter dated 5-7-2006 addressed to counsel for the petitioner has confirmed that the value of the deposit is Rs. 29, 74, 486/- (Rupees twenty nine lakhs, seventy four thousand, four hundred and eighty six only) at the rate of Rs. 84.26 per UK Sterling.

9. From the above discussion it is apparent that the Will of the testator, Shri. Kunwal Kumar Sharma where he bequeathed the properties, including 33474.11 invested with the State Bank of India, Connaught Place branch, New Delhi to the petitioners, was subject to the grant of probate by the High Court of Justice, the District Probate Registry, at Birmingham UK; the probate was granted on 15-7-2003. A certified copy of the probate, along with attested Notary copy of the will has been placed on record.

10. In view of the above, I accept the Will executed by late Kunwal Kumar Sharma for which probate was granted on 15-7-2003 by the High Court of Justice, the District Probate Registry, at Birmingham, UK. The petitioner are hereby granted letters of administration in respect of the property, i.e Fixed Deposit FCNB term deposit No. 0139K45734002 bequeathed in the Will subject to valuation, to be obtained by this Court and the petitioners paying the requisite Court fee, on the basis of the valuation of the term deposit indicated by the State Bank of India, NRI Division, Personal Banking Branch, 11 Sansad Marg, New Delhi, and their furnishing administration bond and surety bond.

11. The petition is allowed in the above terms.

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