

Mrs. Malini Mathrani and Others Vs. State and Others

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Court : Delhi

Decided On : Apr-12-2001

Reported in : 94(2001)DLT239

Judge : Mr. A.K. Sikri, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 151 - Order 26, Rule 9

Appeal No. : Probate Case No. 1 of 2000

Appellant : Mrs. Malini Mathrani and Others

Respondent : State and Others

Advocate for Pet/Ap. : Mr. V.K. Makhija, Sr. Adv. and; Mr. Akshay Makhija, Adv

Disposition : Probate granted

Judgement :

ORDER

A.K. Sikri, J.

1. This probate petition has been filed by petitioner no.1 claiming herself to be the executant of the registered Will dated 2nd February, 1993 executed by late Smt.Vidya A. Mathrani. In the petition it is averred that Smt.Vidya A.Mathrani (hereinafter referred to as Testatrix, for short) executed the aforesaid Will dated

2nd Febraur, 1993 which was duly registered in the Office of the Sub-Registrar at Delhi. The Testatrix died on 1st September, 1999. She left behind three married daughters - Smt.Chanra Tolwani, wife of Shri J.P.Tolwani (respondent no.3), Smt. Shobha Agnihotri, wife of Shri G.M.Agnihotri (respondent no.2) and Smt.Rajni Karkhanis, wife of Shri Anil Karkhanis (petitioner no.2).

2. Smt. Vidya A. Mathrani, the deceased inherited the property bearing No.W-126A, Greater Kailash, Part I, New Delhi - 110048, from her late husband and became the sole and absolute owner of the said property by virtue of succession on the basis of the Will executed by her husband, late A.P.Mathrani who expired in Delhi on 6th February, 1992 and consequent to his death the said property was further transferred in the Municipal records of the deceased Testatrix - Smt.Vidya A.Mathrani vide reference No.Tax/SZ/92/1797. The petitioner no.2 occasionally used to visit her regularly, her belongings like clothes, books (as she is Reader in the Institute of Home Economics, Delhi) and other belongings of her husband and children are still lying in the said premises. Further, the movables, jewellery, expensive clothes, like sarees, etc., gift items, crystal wares belonging to the Testatrix are also lying in the house which the petitioner no.2 apprehends that the respondent no.2 has either tampered or taken charge.

3. The Testatrix was a permanent resident of Delhi. The reason for filing the present petition is stated in para 6 and 7 of the petition as per which upon the death of the Testatrix the copy of the Will was forwarded by the petitioners to the respondents 2 and 3 with the section that respondent no.2 would comply with the wishes of the Testatrix and vacate and hand over the vacant physical possession of the property bearing No.W-126A, Greater Kailash, Part-I, New Delhi to the executors. However, instead of doing so respondent no.2 sent legal notice through her lawyer alleging that Testatrix died intestate. Respondent no.2 even filed suit for perpetual injunction in the Court of Civil Judge denying the rights of the executors and beneficiaries in the Will. therefore, the present petition was filed seeking grant of probate in respect of the Will of the deceased Testatrix.

4. Along with the probate case the petitioners had filed IA.1/2000 under Order XXVI Rule 9 read with Section 151 of the Code of Civil Procedure for appointment

of local Commissioner for preparing the list of items in its proper condition and also to note in detail the quantum of jewellery, number of air conditioners, almirahs, refrigerators, furniture, carpets, television and crystal wares. Ms. Kajal Chandra, advocate was appointed as local Commissioner by Order dated 7th January, 2000. She executed the Commission and submitted her report dated 23rd December, 1999.

5. Notice was issued to the respondent in this probate petition. Citation was also duly published in the newspaper in respect of filing and pendency of the present petition for general public. Respondents 2 and 3 have filed reply admitting the validity, correctness and genuineness of the Will and stated that they had no objection in case the probate prayed for by the petitioners is granted.

6. In order to prove the due execution of the Will, petitioner no.2-Smt. Rajni Karkhanis, appeared as PW-1 and affirmed on oath that she has filed this probate petition in respect of the estate left by the Testatrix who was her mother. She also testified that Testatrix has executed a Will on 2nd February, 1993 of which she was one of the executors. She identified the signatures of the Testatrix at Point 'A' on the Will and that all the attesting witnesses Mr. Sunil Chawla at point 'B' and Mr. J.C. Chopra, Advocate at point 'C'. She further stated that the Will in question was the last executed Will of her mother. Mr. Sunil Chawla attesting witness, appeared as PW-2 and deposed to the effect that Will (Exth. PW.1/1) was executed in his presence. He has signed the Will at mark 'B' as attesting witness and the Testator has signed the same at point 'A' Mr. J.C. Chopra had signed the Will in his presence at point 'C'. He also stated that Will was read over by the Testatrix who was of sound mind at the time of execution of the Will and was not suffering from any mental ailment.

7. Death certificate has also been proved.

8. In view of the aforesaid unrebutted testimony the petitioners have been able to satisfactorily prove the execution of the Will dated 2nd February, 1993 by Mrs. Vidya A. Mathrani. The probate in terms of Will is hereby granted which would include the list of items as prepared by the local include the list of items as prepared by the local Commissioner in her report dated 23rd December, 1999.

Value of these items fixed at R.7 lakhs is hereby accepted.

9. Petitioners are directed to file the requisite Court fee within eight weeks.

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