

**Parduman Kumar Jolly Vs. State and ors.**

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**Court :** Delhi

**Decided On :** Feb-12-1996

**Reported in :** 1996IIAD(Delhi)520; 62(1996)DLT154

**Judge :** M.S.A. Siddiqui, J.

**Acts :** [Succession Act, 1925](#) - Sections 278

**Appeal No. :** First Appeal No. 235 of 1994

**Appellant :** Parduman Kumar Jolly

**Respondent :** State and ors.

**Advocate for Pet/Ap. :** Ashok Kashyap,; A.P. Mahajan and; B.N. Dhar, Advs

**Judgement :**

**M.S.A. Siddiqui, J.**

(1) This is an appeal against the judgment dated 30th May, 1994 of the Additional District Judge, Delhi in Probate Case 298/93. The learned lower Court vide the impugned judgment allowed the petition filed by the respondent No. 2 under section 278 of the Indian Succession Act and granted letters of Administration in his favour.

(2) The facts in the present appeal are that the respondent No. 2 filed a petition under Section 278 of the Indian Succession Act for grant of letters of administration with respect to the Will dated 27.7.1977 executed by his mother Smt. Leela Wanti. The testatrix died on 28.1.1981 leaving behind the appellant and the respondents - Shri P.D. Jolly respondent No. 2, Shri Tilak Raj Jolly respondent No. 3, Shri Sudesh Kumar Jolly respondent No. 4, Late Shri O.P. Jolly and Shri Durga Dass Jolly respondent No. 6 as her sons and three daughters. During her life time she had executed the Will in question whereby two immovable properties belonging to her had been bequeathed to her six sons in equal shares to the exclusion of her three daughters.

(3) Citation to the general public was issued in Chitra Weekly dated 23rd September, 1993 and all the heirs of the testatrix were duly served. However, only respondents Tilak Raj Jolly, Sudesh Kumar Jolly, Parduman Kumar Jolly, Durga Dass Jolly, Om Prakash and Smt. Sevan Kumari filed their reply, It was pleaded that the respondent No. 2 was not entitled to the grant of Letters of Administration as he had foisted false criminal cases on his remaining brothers.

(4) On the pleadings of the parties relevant issues were framed by the learned Lower Court and on consideration of the evidence adduced by the parties the learned Lower Court found that Will in question is a genuine document and the respondent No. 2 is entitled to the grant of letters of Administration. Accordingly, it granted Letters of Administration in favor of the respondent No. 2. Feeling aggrieved by the said judgment the appellant has preferred this appeal to this Court.

(5) The only question in this appeal is whether the respondent No. 2 is entitled to a grant of Letters of Administration with the Will annexed. Learned Counsel for the appellant has strenuously urged before me that the learned Lower Court should not have exercised his discretion in favor of the respondent No. 2. It is beyond the pale of controversy that Smt. Leela Wati, had duly executed her Will dated 27.7.1979. Thus there is no dispute about genuineness of the said Will. It is also undisputed that various suits and criminal cases are pending between the parties. The appellant had deposed before the Lower Court that the respondent No. 2 had

been acting against the interest of his brothers and sisters. On a consideration of the appellant's evidence as well as other material available on the record the learned Lower Court concluded that the respondent No. 2 being a beneficiary is entitled to of his remaining brothers in any way. It is also significant that respondent No. 4, in Probate Case No. 295/93 has filed an application dated 28th January, 1992 wherein he had stated that he will get his share in the partition suit filed by the respondent No. 2 and he had desired that in order to avoid multiplicity of proceedings his petition may be stayed sine-die. Similar petition dated 28th January, 1992 was also filed by the respondent No. 3 in his P.C. No. 291/93. Obviously, the respondent Nos. 3 and 4 were not interested in seeking Letters of Administration and that is why both of them had filed the said petitions before the learned Lower Court. Under these circumstances the learned Lower Court has exercised his discretion in favor of the respondent No. 2 for Letters of Administration. There is nothing on the record to show that the learned Lower Court has exercised its discretion in an arbitrary or capricious manner. On the contrary, having regard to the fact and circumstances of the case I am clearly of the opinion that the discretion was properly exercised and it does not warrant any interference from this Court. No other point has been urged before me. Consequently, there is no substance in this appeal which must be dismissed. I leave the parties to bear their on costs.

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