

**Vijay Kumar and ors. Vs. the State**

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**Court :** Delhi

**Decided On :** Oct-25-2002

**Reported in :** AIR2003Delhi210; 101(2002)DLT385; 2003(66)DRJ364

**Judge :** S. Mukerjee, J.

**Acts :** Indian Succession Act - Sections 63 and 273; Evidence Act - Sections 68

**Appeal No. :** PR 2/92

**Appellant :** Vijay Kumar and ors.

**Respondent :** The State

**Advocate for Def. :** Nemo

**Advocate for Pet/Ap. :** B.K. Chaudhary, Adv

**Judgement :**

**S. Mukherjee, J.**

1. This is a probate petition in relation to the Will dated 31.12.89 stated to have been executed by the deceased Swatantar Kumar, s/o late Shri Jai Prakash, r/o Ghaziabad (U.P), who is stated to have died on 2.3.90 at Delhi.

2. This case was originally filed before the Court of District Judge, Delhi sometime in the year, 1991. During the pendency of the proceedings before the said Court,

the petitioners moved an application pointing out that the properties included certain properties in the State of UP, which are valued more than Rs. 10,000/- and therefore in terms of Section 273(b) of the Indian Succession Act, the Court of District Judge at Delhi did not have the jurisdiction to grant probate which would have effect outside Delhi.

3. Vide order dated 2 the 6.4.91, probate petition was returned to the petitioner by the District Judge for being presented before this Court and on such presentation, has been registered in this Court as Probate Case No. 2/92.

4. The petitioners who originally instituted the probate petition, were the four named executors in the Will dated 31.12.89. Subsequently, Shri Padam Chand Jain (Petitioner No.3) passed away and thereupon in his place, Shri R.K. Garg became the third Executor and an Amended Memo of Parties to that effect has been duly filed on the record of this Court.

5. Citation was issued and notices were served upon the relations referred to in the petition who are the wife, son and daughter of the late deceased. They have filed their no objection, in case probate is granted to the executors of the Will.

6. On the above basis, and there being no contest/objection, the petitioners were directed to file their affidavit by way of evidence. The affidavit of Shri Vijay Kumar, who is petitioner No.1 and executor, has been filed. He has proved the death certificate which is Ex. PW-1/1. He has also deposed that the probate petition has been signed by all the executors and has identified the signatures at points X, Y & Z. He has deposed that late Shri Swantantar Kumar was in good health and sound deposing mind at the time of execution of the Will till his death.

7. He has also duly proved the evaluation of the various properties by way of certificates by Government approved valuer, which are Exhibits- PW-1/2 to Pw-1/11/. He has also proved that apart from the three relations who have given their no objection, there are no other legal heirs, and that no other petition for probate or letter of administration has been filed.

8. Shri Mukesh Kumar, one of the attesting witnesses appeared as P-W/2. He has categorically stated that the Will dated 31.12.89 was executed in his presence, and that the deceased has signed the Will after reading it, and after accepting it to be a correct record of all his wishes. He has also affirmed that the deceased was in good health and in sound deposing mind. He has identified the signatures of the deceased at points (a) to (j) and also and his own signatures (at point k), and that of the other attesting witnesses (at point 1).

9. The Will has been exhibited as PW-2/1. It was been categorically deposed that the Will was itself executed in the presence of the two witnesses, who also signed in the presence of each other, and in the presence of the deceased, all three being present and signing simultaneously.

10. In view of the above, the requirements of Section 63 of the Successions Act and Section 68 of the Evidence Act stand duly fulfilled. The petitioner are held entitled to the grant of probate of the Will dated 31.12.89 in respect of the properties mentioned therein.

11. However the probate will be actually issued after the petitioners pay the prescribed fee as per the proper evaluation of the properties forming the subject matter of the Will.

12. The petition stands disposed of, but with no order as to costs.

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