

S Darshan Singh Vs. State and ors

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Court : Delhi

Decided On : Dec-21-2010

Judge : Mool Chand Garg, J.

Acts : Indian Succession Act

Appeal No. : FAO 360/2010

Appellant : S Darshan Singh

Respondent : State and ors

Advocate for Def. : Mr. Surender Chauhan, Adv.

Advocate for Pet/Ap. : Mr. Keshav Kaushik, Adv.

Judgement :

1. The short point involved in this matter is as to whether the order as passed by the Addl. District Judge dated 29.01.2010 needs correction. The said order has been passed by the Addl. District Judge while granting probate/ letters of administration in relation to an unregistered Will dated 22.08.2005 left by late Shri Sant Prakash Singh Ahuja bequeathing movable and immovable property in favour of Shri Darshan Singh, the appellant and other respondents in equal shares. The immovable property bequeathed by the deceased is House No. 22/69 Punjabi Bagh, New Delhi.

2. As per the Will the deceased while referring to all the six inheritors stated as follows:

"I hereby devise/ give bequeathed the above said house no. 22/69, Punjabi Bagh, New Delhi in equal shares to my above named nephews and nieces, i.e. the sons and daughters of my real and only sister late Smt. Dalip Kaur. They can live and enjoy the said property and if not possible they can sell the property and distribute the proceeds thereof amongst themselves in equal shares. In case any of there pre-deceases me, his/her share shall go to his/her children in equal shares. Whosoever disobeys this will, shall forfeit his/her right in the property and his/her share would be distributed among the remaining ones. The other household goods shall also be the entitlement of my above said nephews and nieces as per their settlement.

In case any of the above legatees relinquish his/her rights or abundant the property the other legatees shall automatically become entitled to it in equal shares. None of the persons in whose favours I am making this Will shall in any circumstances whatsoever lease out, rent out, let out or mortgaged or sell his/her share to any outsider except the legatees.

Any such deals struck clandestinely before or after my death shall be entirely illegal and shall attract criminal proceedings.

My legatees mentioned above, I am not permitted to bring in their respective relatives to stay in the property in their respective share, except, of course by the common consent of all.

In order to avoid any controversy I have pasted my latest photograph at the first page of my this last will. Signed by me, Sant Prakash Ahuja, this 22 nd day of August, 2005 at Delhi.

(SANT PRAKASH SINGH AHUJA) TESTATOR"

3. Thus, the intent and purpose of the Will in question was to bequeath the immovable property bearing No. 22/69 Punjabi Bagh, New Delhi in equal shares to all the named nephews and niece i.e. sons and daughters of his real and only

Sister late Smt. Dalip Kaur who comprises of the petitioner and 5 others as mentioned in the Will as follows:

"(i) nephew (Bhanja) S. Pritam Prakash Singh Paul, (ii) Niece (Bhanji) Mrs. Asha Kapoor (before marriage known as jasbir Kaur)

(iii) Niece Gurpreet Kaur

(iv) Nephew Avtar Singh

(v) Nephew Darshan Singh

(vi) Niece Harjeet Kaur, who after marriage is known as Smt. Pooja Bhatia, W/o Late Shri V.P. Bhatia."

4. The Ld. Addl. District Judge on the basis of evidence collected on record and after hearing the parties while granting bequeath of the Will in question of Shri Darshan Singh and Ors. observed as follows:

"8. Arguments heard. Material perused. As per the Will Ex.PW1/4 including petitioner, there are six beneficiaries. The other beneficiaries has been arrayed as respondent no.2 to 6 as stated above. The respondent No. 2 to 6 have filed the no objection if the petition is allowed but they have not prayed for grant of letter of administration in their favour. Further as per Will Ex.PW1/4 it was inter alia desire of the testator Shri Sant Prakash Ahuja that none of the beneficiaries would lease out, rent out, let out or mortgage or sell his/her share to any outsider except the legates.

9. In these circumstances the petitioner is entitled for administration of letter to the extent of 1/6th share of the immovable property bearing No. 22/69 Punjabi Bag, New Delhi subject to the desires of the deceased in Will Ex.PW1/4. Therefore subject to the furnishing of requisite court fees, administration bonds, with one separate surety bond in terms of valuation report filed on record. An inventory of the property of the deceased shall be exhibited in the court within six months from the date of grant of letter of administration and statement of account will be filed within one year. Any violation of the desire of the testator in will Ex.PW1/4 would

lead to revoke of letter of administration. It is further clarified that question of title, share and ownership of property mentioned above is not decided by this Court. File be consigned to record room."

5. According to the appellants the order passed by the Addl. District Judge is not in the format in which it ought to have been passed. They have referred to Schedule VII annexed to Indian Succession Act which requires grounds of letters of administration on the Will annexed in the following manner:

"SCHEDULE VII

(See Section 290)

FORM OF LETTERS OF ADMINISTRATION

I, , Judge of the District of (or Delegate appointed for granting probate or letters of administration in (here insert the limits of the Delegate's jurisdiction), hereby make known that on the .. day of .. letters of administration (with or without the Will annexed, as the case may be), of the property and credits of , late of , deceased, were granted to ., the father (or as the case may be) of the deceased, he having undertaken to administer the same and to make a full and true inventory of the said property and credits and exhibit the same in this Court, within six months from the date of this grant or within such further time as the Court may, from time to time, appoint, and also to render to this Court a true account of the said property and credits within one year from the same date, or within such further time as the Court may, from time to time, appoint."

6. The aforesaid format does not call upon the Addl. District Judge to pass an order of partition as has been done by the Addl. District Judge in this case while stating that the petitioner i.e. Darshan Singh is entitled for administration of letters to the extent of 1/6 th share of the immovable property bearing No. 22/69 Punjabi Bagh, New Delhi subject to the desires of the deceased in Will Ex.PW1/4.

7. In view of that the order passed by the Addl. District Judge is modified to the extent that letters of administration with Will annexed are granted in favour of the petitioner with respect to the Will Ex.PW1/4. It would thereafter be the

responsibility of the petitioner to administer the Will in accordance with the wish of late Shri S.P. Ahuja and for that purpose he would be required to file Court fees, administration bonds, with one separate surety bond in terms of valuation report filed on record to the satisfaction of the Addl. District Judge who would thereafter also file an inventory of the property of the deceased within six months from the grant of letters of administration, as well as statement of account within one year thereafter. This correction would form part of the letters of administration which shall be granted to the petitioner.

8. With these observations, the appeal is disposed of with no orders as to costs. Copy of the order be sent to the Addl. District Judge for compliance.

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