

Sharat Kumar Dutta Vs. State

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Court : Delhi

Decided On : Jan-24-2013

Judge : Manmohan

Appellant : Sharat Kumar Dutta

Respondent : State

Judgement :

#18 \$~ * IN THE HIGH COURT OF DELHI AT NEW DELHI + TEST.CAS. 41/2012
SHARAT KUMAR DUTTA Through Petitioner Mr. Lokesh Kumar, ASdvocate.
versus STATE Through Respondent None Date of Decision:

24. h January, 2013. % CORAM: HON'BLE MR. JUSTICE MANMOHAN
JUDGMENT MANMOHAN, J (Oral):

1. Present petition has been filed by the petitioner under Section 232 read with Section 278 of the Indian Succession Act, 1925 for grant of letters of administration. The prayer clause is reproduced hereinbelow: The Petitioner most respectfully prays that Letters of Administration with the Will annexed, dated 28.01.2006, of Mrs. Bimla Dutta W/o. Late Dr. Shib Chandra Dutta, having effect throughout India, be granted to him.

2. It has been averred in the petition that the petitioner is the son of the deceased Mrs. Bimla Dutta who had expired on 29th January, 2006. The deceased is stated to have executed a registered Will dated 28th January, 2006 which was duly

attested by Mr. Rajeev Mital and Dr. Hemlata Tewari. The Will dated 28th January, 2006 executed by the deceased is reproduced hereinbelow: I, Mrs. Bimla Dutta, W/o Late Dr. Shib Chandra Dutta, aged 83 years, R/o X-41, Green Park Main, New Delhi-110016, in my full senses, here by make a fresh Will as under on this 28th of January, 06: a. That any previous Declaration/Will is hereby revoked. b. That all my personal Jewellery laying at home or in Bank or on person will go to/belong to Shri Sushant Madhukul Dutta S/o Shri Sharat Kumar Dutta. c. That all Cash either in Bank or at home will go/belong to Shri Hemant Kumar. d. That the ownership of the landed property namely X-41, Green Park Main house shall belong to/get distributed as under:

1. Ground floor shall go to/belong to Shri Sharat Kumar Dutta my second son.
2. First floor shall go to/belong to Shri Sisir Kumar Dutta my first son.
3. Second floor shall go to/belong to Shri Hemant Kumar my third son. Sd/Dated:

28. 01.06 (Mrs. Bimla Dutta) Witness: Sd/1. (Rajeev Mital) B-105, Sec.44, NOIDA-201303 Sd/2. Dr. Hemlata Tewari, M.D., D.M. (Cardiology) Physician & Cardiologist X-47, Green Park, New Delhi.

3. Notice was issued on the present petition on 31st May, 2012. Citation was also directed to be issued, which came to be published in the English edition of the daily newspaper Statesman on 8th August, 2012. No objections were received to the Will after publication of the citation.

4. Notice was duly served on the State. However, none has appeared for the State.

5. Notice was also served on the Chief Revenue Controlling Authority for filing a valuation report. The said report has been duly filed.

6. The other class-I heir of the deceased, namely, Mr. Sisir Kumar Dutta and Mr. Hemant Kumar, have filed affidavits dated 26th May, 2012 stating inter alia that they are the beneficiaries of the Will dated 28th January, 2006 executed by their mother, late Smt. Bimla Dutta and that they do not intend to challenge the said Will

or contest the present proceedings. The other beneficiary, namely, Dr. Sushant Madhukar Dutta, grandson of deceased, has also filed his affidavit dated 3rd August, 2012 stating that he does not oppose the instant petition and has no objection for grant of letter of administration in favour of petitioner.

7. As regards the petitioner, he has adduced evidence by filing his own affidavit. The affidavit tendered by him in evidence is marked as Ex.PW1/A. It has been stated by the petitioner in his affidavit dated 26th November, 2012 that Smt. Bimla Dutta had expired on 29th January, 2006, leaving behind her last will and testament dated 28th January, 2006, which has been marked as Ex.PW1/2. PW1 has proved the death certificate of Smt. Bimla Dutta as Ex.PW1/1.

8. Mr. Rajeev Mittal, one of the attesting witnesses has filed affidavit dated 29th November, 2012 marked as Ex.PW2/A. In the said affidavit, he has deposed that Smt. Bimla Dutta was in a sound disposing mind at the time of signing the Will. It has been further deposed that Smt. Bimla Dutta had signed the Will in the presence of PW2 on 28th January, 2006 and that he recognized the signatures of the deceased. He also deposed that he and the other witness to the Will, namely, Dr. Hemlata Tiwari had signed the Will of Smt. Bimla Dutta in each others presence and in the presence of the Testator.

9. In view of the above, this Court is satisfied that the petitioner has succeeded in proving that the deceased Smt. Bimla Dutta had executed the Will dated 28th January, 2006 (Ex.PW1/2) and the said Will was her last will and testament. The deceased was predeceased by her husband Dr. S.C. Dutta and is survived by three legal heirs, the petitioner and his two brothers, namely, Mr. Sisir Kumar Dutta and Mr. Hemant Kumar. The deceased has bequeathed her immovable property, i.e., premises No. X-41, Green Park Main, New Delhi, in favour of the petitioner and his two brothers herein in the manner as detailed in the Will (Ex.PW1/2). The Will also mentions the fact that the deceased had bequeathed all her movable assets to the persons, in the manner as detailed in the Will (Ex.PW1/2).

10. In view of the aforesaid facts and circumstances, there appears no impediment in granting the letters of administration in respect of the Will dated 28th January,

2006 executed by late Smt. Bimla Dutta in favour of the petitioner. Accordingly, the present petition is allowed. The letters of administration with a copy of the Will dated 28th January, 2006 annexed thereto is granted in favour of the petitioner, subject to his furnishing the requisite court fee in terms of the valuation report and submitting an administration bond with one surety in accordance with law. Accordingly, the present petition stands disposed of. MANMOHAN, J JANUARY 24 2013 rn

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