

Pradeep Jain Vs. State

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Court : Delhi

Decided On : Nov-21-2012

Judge : V. K. Jain

Appellant : Pradeep Jain

Respondent : State

Advocate for Pet/Ap. : Ms. Smriti Vashisht

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision:

21. t November, 2012 % + TEST. CAS. 60/2010 PRADEEP JAIN Plaintiff
Through: Ms. Smriti Vashisht, Advocate. versus STATE Defendant Through:
None. CORAM: HON'BLE MR. JUSTICE V.K.JAIN JUDGMENT V.K.JAIN, J.

(ORAL) This is a petition for grant of probate in respect of the Will dated 14.08.2009 stated to have been executed by late Smt. Otto Jain, wife of the petitioner Pradeep Jain. It is stated in the petition that late Smt Otto Jain, who expired on 19.08.2009, had executed a Will dated 14.08.2009, bequeathing her estate to the petitioner. It is further stated in the petition that late Smt Otto Jain was survived by three LRs namely Pradeep Jain and two minor children namely Mast. Mrinal Jain and Mast. Hardik Jain.

2. On filing of this petition, citation was published in newspaper. The petitioner being the natural guardian of his minor sons, no notice to the minor sons was

issued.

3. The petitioner filed affidavit of attesting witness Mr. Rajiv Wadhawan alongwith the petition. In this affidavit Mr. Wadhawan stated that Will dated 14.08.2009 was signed by late Smt Otto Jain in his presence and in the presence of the other witness Mrs. Alka Jain who also had signed in the presence of the deceased. He specifically stated that late Smt. Otto Jain had signed and executed the Will in their presence. The petitioner has also filed the affidavit of other attesting witness Mrs. Alka Jain who has corroborated the deposition of Mr. Rajiv Wadhawan and has stated that she was one of the attesting witnesses to the Will dated 14.08.2009 executed by late Smt. Otto Jain wife of Mr. Pradeep Jain. She further stated that the testator had signed and executed the Will in their favour and had also stated that it was her last Will.

4. The original Will executed by late Smt Otto Jain is Ex PW1/1 and it purports to have been attested by Mrs. Alka Jain and Mr. Rajiv Wadhawan. In the Will Smt. Otto Jain has stated that Flat No. 411, Navniti Apartment, I.P. Extension Patparganj, Delhi-92 was purchased by her husband from his funds though it was registered in her name. The aforesaid flat was bequeathed by her solely to her husband expecting that he would properly bring up her children.

5. The execution of an unprivileged Will is governed by Section 63 of Indian Succession Act which, to the extent it is relevant, provides that the Will shall be attested by two or more witnesses, each of whom has seen the Testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the Testator, or has received from the Testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses shall sign the Will in the presence of the Testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary. Section 68 of Evidence Act, to the extent, it is relevant, provides that if a document is required by law to be attested, it shall not be used as evidence until at least one attesting witness has been called for the purpose of proving its execution if there be an attesting witness alive, and subject to the process of the Court and capable of

giving evidence. Since the Will is a document required by law to be attested by at least two witnesses, the petitioner could have proved it by producing one of the attesting witnesses of the Will.

6. The Will holding to be executed by late Smt. Otto Jain was required to be proved by examining one of the two attesting witnesses to the Will. The plaintiff filed affidavits of both the attesting witnesses one, at the time of filing of the petition and the other by way of evidence. Since there is no contest to the petition and there is no suspicious circumstances surrounding execution of the Will, I see no reason to suspect the genuineness of the Will set up by the petitioner. The other two LRs of late Smt. Otto Jain being minor children under the care of their father, there seems to be nothing unnatural in bequeathing the property solely to the husband particularly when the same is alleged to have been acquired from the funds of the husband.

7. For the reasons stated above, the petition is allowed. The Registry is directed to issue probate in respect of the Will executed by late Smt. Otto Jain, with copy of the Will annexed to it, to the petitioner on filing of appropriate Court fee. V.K. JAIN,
J NOVEMBER 21 2012 mb

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