

(2012) 04 DEL CK 0433

In the Delhi High Court

Case No : Regular First Appeal (OS) 30 of 2008

Judge Pal Khera

APPELLANT

Vs

Chand Rani Khera and Others

RESPONDENT

Date of Decision : 23-04-2012

Acts Referred:

Citation : (2012) 04 DEL CK 0433

Hon'ble Judges : Siddharth Mridul, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Sanjiv Kumar, for the Appellant; Sunil Malhotra, Advocate and Mr. Amit Sanduja, Advocate for R-1. Mr. Padam Kumar Khanna, Advocate for R-3, 4 and 6. Ms. Purnima Maheshwari, Advocate for R-7. Mr. Sanjay Jain instructed by Mr. Vivek Singh, Manish Kaushik, Abhijit Mittal and Ms. Namisha Gupta, Advocate for R-11., for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Appellant was the petitioner in Probate Case No. 49/2006. Claim in the petition was to grant Letter of Administration with will dated May 31, 1994 annexed.

2. The will in question pertained to the estate of petitioner's father, late Sh. Ram Lal Khera.

3. As per the petition, late Sh. Ram Lal Khera, in a sound disposing mind and in presence of witnesses, had executed the will in question and got the same registered on June 07, 1994. As per the petition, Sh. Ram Lal Khera had bequeathed only a life estate in favour of his wife to use and enjoy the property and the corpus was devolved upon the petitioner and his son.

4. The mother, i.e. Smt. Chand Rani Khera did not file a written opposition to the petition filed, but the record of the learned Single Judge would reveal that she did not join issues with the petitioner on the subject of her husband having executed the will in question. She questioned the interpretation of the will as

propounded by the petitioner and claimed complete title to the estate.

5. Thus, the only issue to be adjudicated by the learned Single Judge was to interpret the will and the said issue finds itself reflected in the order dated January 11, 2008 where the learned Single Judge has penned that arguments would be heard on the maintainability of the petition on March 25, 2008.

6. The reason for so indicating was obvious. Petitioner was seeking Letter of Administration with will annexed. The mother was not disputing the will executed by her husband. The mother and the son were at variance on the issue: Whereas the son asserted that what his mother got a life estate, the mother predicated a stand to the contrary by asserting that the bequest in her favour was absolute.

7. The debate between the parties led the learned Single Judge to consider the will in question.

8. It had to be so.

9. The first three clauses of the will are undisputedly by way of recitals; a fact not disputed by either counsel.

10. The operative clauses of the will are three in number i.e. Clause No.4, 5 and 6, which read as under:

4. That I bequeath and devise that after my demise my all moveable and immovable properties shall go and devolve upon my wife Smt.Chand Rani Khera absolutely and exclusively to the exclusion of all others. The said beneficiary Smt.Chand Rani Khera can use hold and enjoy my moveable and immovable properties after my death in any manner as she likes.

5. That I further bequeath and devise that after my demise and demise of my wife said Smt.Chand Rani Khera the rest of the property(s) of mine whether stand in my name or substituted in the name of my wife shall go and devolve upon my younger son Mr.Judge Pal Khera and my grandson Master Deepak Khera equally and absolutely to the exclusion of all others. My son Shri Ramesh Kumar Khera, his wife Smt.Rita Khera and their son and daughter, my four daughters Smt.Kamlesh Adlekha, Smt.Neelam Narula, Smt.Praveen Malhotra and Smt.Seema Dua and their legal heirs, and my daughter-in-law Smt.Sunita Khera shall have no right, title or interest in my properties whether moveable or immovable whatsoever i.e. I hereby debar them absolutely from my properties.

6. That my son Shri Judge Pal Khera and grandson Master Deepak Khera can use, hold and enjoy the properties of mine leaving behind by my wife after her death. I hereby make a provision that my son Judge Pal Khera shall have no right to sell, mortgage, gift, or dispose off in any manner the properties devolved upon them till my grandson will not attain the age of 18 years.

11. Dealing with the four clauses, it is apparent that clause No.4 which consists of two sentences, makes a bequest in favour of Smt.Chand Rani. The first sentence uses two words which are of importance. The first is the word

"absolutely", and the second is the word "exclusively"

12. The testator of the will has clearly penned that after his demise, his moveable and immoveable property shall devolve upon his wife absolutely and exclusively to the exclusion of all others.

13. The next sentence of clause No.4, immediately succeeding the afore-noted first sentence, refers to the fact that the beneficiary shall use, hold and enjoy the moveable and immoveable properties bequeathed to her in any manner as she likes.

14. Clause-5 proceeds to make a further bequest and devises that after Smt.Chand Rani Khera, the wife of the testator dies, the rest of the property in the name of the testator, whether substituted in the name of the wife shall devolve in a manner specified in clause No.5 and 6 of the will.

15. The learned Single Judge, vide impugned order dated April 01, 2008, has interpreted the will as a complete, absolute and unrestricted bequest in favour of the mother of the petitioner and for said reason has held that the petitioner is not entitled to be granted Letter of Administration with will annexed.

16. Questioning the propriety of the impugned order, grievance raised in the appeal is that the learned Single Judge ought to have granted petitioner an opportunity to lead evidence after pleadings were completed.

17. We do not agree. Evidence has to be led to prove a matter of fact, if parties are at variance on a question of fact.

18. The execution of the will by late Sh. Ram Lal Khera was not in dispute between the mother and the son. What was disputed between the two was the effect of the will. The two rival versions taken by the mother and the son have already been noted by us herein above.

18. Thus, the learned Single Judge was perfectly justified in penning the order dated July 25, 2007, that he would hear arguments on the maintainability of the action.

20. On merits, it is urged by learned counsel for the appellant that the use of the three words: (i) "use", (ii) "hold", and (iii) "enjoy", in clause-4 of the will makes it clear that the intention of the testator was that his wife would, during her lifetime, use, hold and enjoy the property to the exclusion of the others. Counsel highlights that the testator has not conferred the power of sale on his wife.

21. On the strength of said argument, learned counsel for the appellant distinguishes the decision of the Supreme Court reported as Mauleshwar Mani and Others Vs. Jagdish Prasad and Others, , which has been cited by learned counsel for the respondents to urge that where there is a conflict between a latter and an earlier clause in the will, the latter perishes. With respect to the decision of the Supreme Court, to distinguish the same, learned counsel for the petitioner draws attention to the fact that in the will in question the husband had

conferred upon his wife the power to alienate the property inherited.

22. The decision of the Supreme Court would reveal that the testator had made an absolute bequest in the earlier clause of the will in favour of his second wife, Smt.Sona Devi, and vide latter clause had made a further bequest of the same properties to the children born from his first wife.

23. The Supreme Court interpreted the will as a complete bequest in favour of Smt.Sona Devi and thus held that the latter part of the will was void.

24. The will is not a statute. It is a solemn expression, in writing, by a living person. It is directed at the future, requiring the future to abide by the intention expressed in the document pertaining to the manner in which the estate would devolve.

25. A perusal of the will in question, vide clause-4, reflects that the testator had intended to have his estate devolved upon his wife Chand Rani and while do devising, the use of the two words: "absolutely" and "exclusively", cannot be lost sight of.

26. These are words expressed to show an intention which is unidirectional i.e. to highlight that the beneficiary takes full and to the exclusion of others.

27. It is true that the next sentence, uses only the three words "use", "hold" and "enjoy". There is an omission to use the word "sell", but that does not mean that the intention of the testator was to make a limited bequest in favour of his wife.

28. The sentence in question appears to have been put by the testator to expand upon the subject of the first sentence wherein he has used the words "absolutely" and "exclusively". The second sentence is a surplus sentence, for the reason, if the bequest was absolute and exclusive there was no necessity to so state in the second sentence. The obvious intention is to emphasize, by way of re-emphasizing, that the testator wanted his wife to have absolutely and exclusively. Thus, not expressly conferring the power to sell is neither here nor there since power to sell is incidental to ownership.

29. From a perusal of clause-6 of the will it is apparent that the testator was aware of a limited bequest and a complete bequest. The bequest, as per para 6, would be if something survived from the estate of the deceased after his wife dies. The residual bequest has been devised in favour of the petitioner and his son. However, the bequest in favour of the petitioner is clearly listing that the petitioner would have no right to sell, mortgage, gift or dispose of the property till his grandson attains the age of 18 years. We would like to highlight, with reference to clause-6, to bring home the point the knowledge of the testator pertaining to limited and absolute bequest, but hasten to add that the bequest, as per said clause, would be meaningless in the context of the bequest in favour of Chand Rani Khara as per clause-4, which makes the bequest absolute and exclusive. We accordingly concur with the view taken by the learned Single Judge and dismiss the appeal but leave the parties to bear their own costs.