
(1996) 11 AHC CK 0015
In the Allahabad High Court
Case No : C.M.W.P. No. 10614 of 1983

Kumari Sushila Saxena

APPELLANT

Vs

Sub-Registrar and Others

RESPONDENT

Date of Decision : 19-11-1996

Acts Referred:

Constitution of India, 1950 — Article 226
Registration Act, 1908 — Section 32, 33, 34, 35, 40

Citation : (1997) 1 CivCC 687

Hon'ble Judges : O.P. Jain, J; D.S. Sinha, J

Bench : Division Bench

Advocate : Ajit Kumar, for the Appellant; Vinay Malaviya and S.C., for the Respondent

Final Decision : Dismissed

Judgement

D.S. Sinha, J.—Heard Sri. Janardan Sahai. learned Counsel for the Petitioner and Sri. Vinay Malaviya, learned standing Counsel representing the Respondent No. 1. Nobody has appeared for Sri. Ashok Kumar Saxena and Sri. Shushil Kumar, the contesting private Respondent No. 2 and 3, respectively.

2. Relevant facts, giving rise to instant petition, are these:

Sri. Daya Shanker Saxena, Advocate, the father of the Respondent No. 2 and 3, and brother of the Petitioner (hereinafter called the "Testator") executed a will in respect of a dwelling house situate in Mohalla Kalia Tola, Shahjahanpur in favour of the Respondent No. 2 and 3.

Upon the death of testator the Respondent No. 2 and 3 presented the will before Sub-Registrar of Shahjahanpur, the Respondent No. 1 for registration thereof.

3. During the proceedings for posthumous registration of the will before the Respondent No. 1 Km. Shushila Saxena, the sister of the testator, Smt. Mohan Pyari, wife of the brother of the testator, and Km. Saroj Saxena, the niece of the testator, insisted to participate in the proceedings and object to the registration

of the will. They made an application supported by affidavit praying that they be impleaded as they were necessary parties to the proceedings of posthumous registration of the will. The claim for impleadment and right to participate in the proceedings and object the registration of the will was asserted on the ground that the house in respect whereof will was executed by the testator belonged to the mother of testator; and that the testator had no legal authority to execute the will. They also asserted that the will was not executed by the testator; and that the will did not contain his signature. According to them, the signature of the testator appearing on the will was forged.

4. It appears that the Respondent No. 1 did not allow the Petitioner and other objectors either to be impleaded or to participate in the proceedings for posthumous registration of the will.

5. Smt. Mohan Pyari and Km. Saroj Saxena have acquiesced. However, feeling aggrieved by her exclusion from participation in the proceedings for posthumous registration of the will, the Petitioner Invokes the jurisdiction of this Court under Article 226 of the Constitution of India and urges it to intervene in the matter.

6. The provisions regulating the presentation of documents for registration, other than wills and authorities to adopt, are contained in Sections 32, 33, 34 and 35 occurring in Part VI of the Registration Act, 1908 (hereinafter called the Act). Regarding the wills and authorities to adopt, the provisions are contained in Sections 40 and 41 which find place in Part VIII of the Act. Sections 40 and 41 which are material and have bearing for decision of this case, are extracted below:

40. Persons entitled to present wills and authorities to adopt.-(1) The testator, or after his death any person claiming as executor or otherwise under a will, may present it to any Registrar or Sub-Registrar for registration.

(2) The donor, or after his death the donee, of any authority to adopt, or the adoptive son, may present it to any Registrar or Sub Registrar for registration.

41. Registration of wills and authorities to adopt.-(1) A will or an authority to adopt, presented for registration by the testator or donor may be registered in the same manner as any other document.

(2) A will or authority to adopt presented for registration by any other person entitled to present it shall be registered if the registering officer is satisfied-

(a) that the will or authority was executed by the testator or donor, as the case may be;

(b) that the testator or donor is dead; and

(c) that the person presenting the will or authority is, u/s 40, entitled to present the same.

7. Sub-section (1) of Section 40 of the Act names the persons entitled to present

wills. They are testator, and after his death, the person claiming as executor or otherwise under a will.

8. According to Sub-section (1) of Section 41 of the Act, a will presented by the testator has to be registered by the registering authority in the same manner as any other document, i.e., after complying the provisions of Sections 32, 33, 34 and 35 of the Act.

9. Sub-section (2) of Section 41 of the Act envisages that the will presented by any person, other than the testator, entitled to present, has to be registered by the registering authority on his being satisfied about the following three, things:

(i) that the will has been executed by testator;

(ii) that the testator Is dead; and

(iii) that the person presenting the will is, u/s 40, entitled to present the same.

10. It is not disputed that in the instant case testator has died. It is also not in dispute that the Respondent No. 2 and 3, who presented will before the Respondent No. 1 for registration are, u/s 40(1) of the Act, entitled to present the same. Thus, what remains Is the satisfaction of the; Respondent No. 1 about the factum of execution of will by the testator.

11. Satisfaction of the registering authority about execution of a will by the testator, contemplated in Sub-section (2) of Section 41 of the Act, may be derived from and arrived at by examining the attesting witnesses and the scribe, who are the persons most competent to testify in that regard. The registering authority may examine them. Neither the Petitioner nor other objectors can be, by any stretch of imagination, held to be the person or persons competent to testify the factum of the execution of the will. They may be competent to challenge the legality of the transaction covered by the will. It has to be borne in mind that the registration is merely a notification of the factum of execution of a document evidencing the event of transaction affecting the title qua any person or property. It has nothing to do with the legality of the transaction covered by the document, which may be open to challenge by the affected person in appropriate proceedings at proper forum.

12. Thus, the Petitioner is neither a necessary party to the proceedings for posthumous registration of the will pending before the Respondent No. 1 nor is she legally entitled to object to the registration of the will. She is totally a stranger to the said proceedings. The Respondent No. 1 committed no error or Illegality either in refusing impleadment of the Petitioner or in declining to permit her to participate in the proceedings for the purpose of objecting to the registration of the will and in doing so he was well within the bounds of law.

13. In the result, the petition falls and is hereby dismissed. The interim order dated 1st September, 1983 shall stand discharged. There is no order as to costs.