

(2009) 10 DEL CK 0003
In the Delhi High Court
Case No : Probate Case No. 19 of 1992

Laxman Das

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 13-10-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3, 80
Penal Code, 1860 (IPC) — Section 420, 467, 471, 474
Succession Act, 1925 — Section 217, 222, 224, 227, 276

Citation : (2009) 10 DEL CK 0003

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : Gaurav Harnal and Kumud Harnal, for the Appellant; Hemant Malhotra, for the Respondent

Judgement

Manmohan Singh, J.—The Petitioner filed an application u/s 276 of the Indian Succession Act, 1925 for grant of Probate in his favour on the basis of a Registered Will dated 18.03.1985 left by deceased Late Sh. Ghoshu Mal, registered in the office of Sub-Registrar, New Delhi under Registration No. 1211 in Book No. 3, Vol 307 on pages 172-174 on 06.04.1985.

2. The Petitioner in his application submitted that the testator Sh. Ghoshu Mal died at New Delhi on 13.06.1988 and avers that the deceased left behind a Will and testament dated 18.03.1985 which was registered by him as aforesaid. The said Will was executed by the testator in the presence of three witnesses, (i) Sh. Mohan Lal, S/o Sh. Sugta Mal, R/o 8740 Rahat Ganj, Roshan Ara Road, Delhi, (ii) Smt. Ratna Devi, W/o Sh. Mohan Lal, R/o B-4/93, Phase II, Ashok Vihar, Delhi-110052, and (iii) Sh. Ranbir Nat Harnal, Advocate who identified the said testator before the said sub-registrar.

3. The assets left by the deceased are stated by the Petitioner to be the following:

a. Shop-cum-residence at No. 6, Sarojini Nagar Market, New Delhi valued at Rs. 20,00,000/- allotted to him by Estate Office, New Delhi in the name of Ram

Chand Ghoshu Mal;

b. Business under the name of M/s Sindhi Boot House valued at Rs. 75, 000/- registered as Shop No. 6, Sarojini Nagar Market, New Delhi.

4. The Petitioner submitted that the deceased left behind three heirs i.e. two sons and one daughter namely Sh. Laxman Dass, Sh. Mohan Dass and Smt. Ratna Devi alias Chandra Devi. The Petitioner alleged that the deceased had disowned Sh. Mohan Dass and Smt. Ratna Devi and directed that all his assets and the allotment of the house on his death would be transferred to his son Sh. Laxman Dass. The petitioner has been made the executor of the Will and the deceased had last resided and died at Delhi.

5. During the pendency of the proceeding, the petitioner died on 1st May, 1997. The LRs of the deceased petitioner filed an IA No. 9182/1999 for substitution of their names in the place of deceased petitioner. Vide order dated 16th March, 1999, names of the LRs were ordered to be inserted in place of the deceased petitioner. 6. The legal heirs of late Sh. Ram Chand s/o Lt. Sh. Ghoshu Mal namely Smt. Sharda, Smt. Kaushalya, Smt. Sunita, Sh. Chandu Lal, Sh. Arjun and Smt. Sita Devi filed objections to the probate application on the ground that Sh. Ghoshu Mal was not the owner of Shop No. 6, Sarojini Nagar Market, Delhi and hence the said deceased had no right to execute the Will in respect of the above-mentioned property.

7. The Objectors submit that the said property was allotted to Late Sh. Ram Chand, S/o Late Sh. Ghoshu Mal by the Directorate of Estate, Government of India, Ministry of Works Housing (now Urban Development) in 1951. The allotment was made by the House Building Controller vide No. HBC/359/79/51 dated 25.01.1951 referred as Annexure R..

8. The Objectors submit that Sh. Ram Chand died on 05.08.1984. They aver that Sh. Ram Chand had been running the business in the said property with his father but due to his sickness, he allowed his father Sh. Ghoshu Mal to run the same as license.

9. The Objectors allege that late Sh. Ghoshu Mal committed a breach of trust by forging the documents and representing himself as Sh. Ram Chand. This fact allegedly came to Sh. Ram Chand's notice by a letter dated 18.03.1980 from Sh. S.N. Dass, Deputy Director of Estates (Marketing) Nirman Bhawan, New Delhi titled letter No. DEMKT/SM/6. Late Sh. Ghoshu Mal allegedly produced before the Director of Estates the forged declaration and an affidavit purportedly signed by late Sh. Ram Chand in favour of Sh. Ghoshu Mal. Sh. Ram Chand, therefore, revoked the license of Sh. Ghoshu Mal for using the said property in April, 1980.

10. The Objectors submit that late Sh. Ram Chand lodged a complaint in the Crime Branch at Police Headquarters I.P Estates, New Delhi wherein he stated that late Sh. Ghoshu Mal forged his signatures in order to get the allotment of property No. 6 at Sarojini Nagar, New Delhi. After investigation, the Crime

Branch issued a charge sheet against Sh. Ghoshu Mal for committing criminal offence under Section(s) 420/467/471 and 474 of the IPC vide FIR No. 343/80. However, it is to be noted here that Sh. Ghoshu Mal was presented before the Court of Sh. Om Prakash M.M, New Delhi who by judgment dated 15.07.1987 acquitted him and the complaint of late Sh. Ram Chand was rejected.

11. The Objectors allege that the entire forging of documents etc was actually carried out by the Petitioner to procure the property of late Sh. Ram Chand. The Objectors aver that the fact that the forged declarations were handed over to the Crime Branch by Sh. Laxman Dass by letter dated 26th November, 1982 establish beyond doubt that the criminal conspiracy was laid down by the same.

12. The Objectors aver that late Sh. Ram Chand also filed a suit for possession in respect of the disputed property in 1982 being Suit No. 139/82. Since during the proceedings he died, his legal heirs filed an application under Order XXIII Rule 3 of the Code before the Sub-Judge, Delhi for placing them on the record as the legal heirs of late Sh. Ram Chand. The said application was however dismissed as it was time barred.

13. The Objectors allege that the Petitioner has concealed the material fact that the shop was cancelled by the Directorate of Estate in May 1981 and has not been restored so far. The Directorate of Estates allegedly placed a pre-condition on Sh. Ghoshu Mal that unless a no- objection affidavit was duly signed by Late Sh. Ram Chand, the shop could not be transferred in his name. Due to this pre-condition, the Petitioner allegedly forged the affidavit and produced the same before the Directorate of Estates.

14. The Objectors submit that Smt. Sita Devi w/o Sh. Ram Chand on behalf of the other objectors made an application to the Directorate of Estates to restore the shop in her name on 28.04.1987 but no reply has been given so far by the Directorate of Estates, Nirman Bhawan, New Delhi.

15. The Objectors aver that the Petitioner has also concealed the material fact that Smt. Seeta Devi is the widow of Sh. Ram Chand and that she filed a suit for mandatory injunction asking the Directorate of Estates, Nirman Bhawan, New Delhi for a direction to grant ownership right to the said property in her favour. The said suit was pending before the Court of Sh. D.S. Punia, Sub-Judge, Delhi.

16. The Objectors relied upon the affidavit of Sh. S.C. Sharma who deposed that in the year 1980-81, he was working as an Assistant Director of Estate, New Delhi and at that time, the allotment of the said property was in the joint name of Sh. Ram Chand and Sh. Ghoshu Mal.

17. The Objectors also contended that the present petition deserves to be dismissed due to non-joinder of necessary parties as the property in question belongs to the Directorate of Estates and the same has not been impleaded in the case as a party.

18. The Objectors also allege that the property has been wrongly valued and its

correct market value is Rs. 80,00,000/-.

19. The Petitioner has not opposed that Late Sh. Ram Chand was the son of Late Sh. Ghoshu Mal but alleged that he had no right or title or interest in the said property. The Petitioner submits that Sh. Ram Chand executed a declaration dated 06.08.1963 in favour of Sh. Ghoshu Mal and Sh. Laxman Das but after a period of almost 17 years from the date of its execution made a complaint before the Estate Officer to the effect that it was forged. This complaint was dismissed by order dated 15.07.1987, and it held that the said Declaration was genuine. The Petitioner thus avers that the Declaration dated 06.08.1993 is binding on the legal heirs of late Sh. Ram Chand also.

20. The Petitioner further submits that Sh. Ram Chand filed Suit No. 154/80 for declaration and consequential relief against Sh Ghoshu Mal, the petitioner and others which was dismissed vide order dated 11.03.1982. Sh. Ram Chand also filed another Suit No. 139/82 for recovery of possession against Sh. Ghoshu Mal, the Petitioner and others which was also dismissed as abated on 28.03.1987.

21. The Petitioner avers that late Sh. Ghoshu Mal was legally competent to execute his last Will and the same was duly executed, attested and registered. The petitioner has produced three witnesses.

22. PW-1, Smt. Ratna Devi, W/o Sh. Mohan Lal D/o Sh. Ghoshu Mal in her examination-in-chief stated that the Will in question was written and registered in her presence. She admitted her signatures on the Will as a witness. She also stated that Sh. Mohan Lal (her husband) and Sh. Ghoshu Mal signed the Will in her presence. It is stated by her that Sh. Ghoshu Mal has 4 sons and three daughters and Sh. Ram Chand was her elder brother.

23. Sh. Mohan Lal S/o Sh. Surta Mal (husband of Smt. Ratna Devi) appeared as PW-2 and also supported the petitioner's case and identified his signatures and signatures of Sh. Ghoshu Mal and Smt. Ratna Devi. He also stated that the Will was registered in his presence. It is further stated by him that Sh. Ghoshu Mal was not mentally disturbed or in ill health during the execution of the Will. However, he deposed that he was not aware whether the property had been allotted in the joint name of Ram Chand Ghoshu Mal or not. He is also not aware whether any notice has been served by the Directorate of Estate. He also deposed that Late Sh. Ghoshu Mal has 4 sons and 2 daughters.

24. PW-3, Sh. Jai Kishan, S/o late Sh. Laxman Dass filed an affidavit in evidence on 19.05.2004 and moved an application for grant of letters of administration under the Indian Succession Act, 1925 as his father Sh. Laxman Dass was the sole executor of the last Will dated 18.03.1985 and had applied for the probate of the said Will of late Sh. Ghoshu Mal. Sh. Jai Kishan submits that Sh. Laxman Dass died on 01.05.1997. The deceased, Sh. Ghoshu Mal, testator and Sh. Laxman Das, sole executor/petitioner were living in Delhi and died at Delhi within the jurisdiction of this Court. He stated that Late Sh. Ghoshu Mal has 4 sons and 1 daughter.

25. Sh. Jai Kishan, S/o Sh. Laxman Dass on cross-examination denied having any knowledge regarding the allotment of shop by Sh. Ram Chand to Sh. Ghoshu Mal as a licensee and of any notice served upon Sh. Ghoshu Mal by Sh. Ram Chand and of the criminal complaint lodged by the latter against the former and of the alleged forging of signature by Sh. Ghoshu Mal.

26. Sh. Ajit Singh, LDC, Sub-Registrar No. III stated that the Will in question is dated 06.04.1985 and is registered on the same date. The said Will was executed by Sh. Ghoshu Mal with Sh. Mohan Lal, Smt. Ratna Devi and Sh. Ranbir Nath Harmal as witnesses. The Will was executed on 18.03.1985. However, he admits that the Will was not executed or registered before him as he was not posted at the Sub- Registrars office at that time. He admits that he is only referring to records and that he cannot attest as to whether Sh. Ghoshu Mal was himself present at the time of registration of the Will.

27. An affidavit of evidence was filed by Smt. Sita Devi, w/o late Sh. Ram Chand as DW-1 repeating and affirming the contents of Sh. Chandu Lal, S/o late Sh. Ram Chand. In examination-in-chief, she deposed that she had no understanding as to whether the affidavit filed in her name has been filed by her and that she is unaware of what the affidavit states as she is illiterate and her lawyer would know the same. She stated that they lived in the disputed property but later moved to Shop No. 5, Sarojini Nagar, New Delhi. When her husband fell sick, he asked his father Sh. Ghoshu Mal to run the business but when he recovered, he was not allowed to enter the disputed property. She further stated that her husband never made any declaration as to the relinquishment of his right to the disputed property in favour of Sh. Ghoshu Mal and that his signatures were forged to obtain the same. She further stated that the case filed by Sh. Laxman Dass is false and that though she has no animosity towards Smt. Ranta Devi (who is her sister- in-law), the latter has been acting on the tutoring of late Sh. Ghoshu Mal and late Sh. Laxman Dass and now Sh. Jai Kishan. She is not aware whether the Will is registered or not or whether it is executed. In fact she is not aware of the present case.

28. DW-2, Sh. M.K Gupta, Sr. Assistant, Special Transfer Cell, Land & Building, NDMC, Palika Kendra, Parliament Street on cross- examination stated that the letter dated 17.09.1951 regarding allotment of disputed property was in the name of Ram Chand Ghoshu Mal but the words joint allotment. were not mentioned in the said letter. He also stated that as per letter dated 09.04.1975, the tenancy of the disputed property was revoked and the same has not yet been restored. He further stated that as per letter dated 02.08.1978, Sh. Ghoshu Mal was asked to furnish a no objection affidavit from Sh. Ram Chand as the documents provided were signed only by Sh. Ghoshu Mal. On 28.08.1978, Sh. Ghsohu Mal sent declaration dated 6th August, 1963 of Sh. Ram Chand in his favour and on 12.01.1979, the Directorate of Estate received a letter from Sh. Ram Chand stating that his signatures have been forged on the said affidavit/ declaration as he had received no communication in respect of ownership rights

of disputed property. He stated that it would be incorrect to say that the disputed property was allotted exclusively to Sh. Ram Chand as the allotment is in the name of Ram Chand Ghoshu Mal. Sh. Ram Chand has not given any affidavit as per records. Presently Sh. Jai Kishan Ahuja is in possession of the shop in question.

29. On further cross-examination dated 28.09.2007, Sh. M.K Gupta stated that the form of terms of tenancy dated 27.08.1951 was filled by Ram Chand Ghoshu Mal and the memorandum regarding recovery of rent was also addressed to the same. However, a letter on record dated 07.02.1968 by Sh. Ghoshu Mal mentions that he has deposited water charges. As per the records, it is Sh. Ghoshu Mal who has been paying rent for the disputed property. He further stated that on various documents like Insurance Policy, Income Tax Assessment records etc., the name used is Ghoshu Mal and there is no document to prove that Sh. Ram Chand ever discharged any liability like payment of rent etc towards the disputed property. He also stated that there is a photocopy of declaration dated 06.08.1963 executed by Sh. Ram Chand wherein he has submitted that he has no connection with the disputed property. He also stated that Sh. Ram Chand lived in Shop No. 5 and that he never lived in Shop No. 6.

30. Sh. Chandu Lal, DW-3, S/o Late Sh. Ram Chand filed an affidavit in evidence on 13.09.2005 stating the following:

a. That late Sh. Ram Chand was allotted the disputed property by the Building and Rent Controller, Directorate of Estates, Government of India vide document No. HBC/359/79/51 dated 25.01.1951.

b. That late Sh. Ram Chand died on 05.08.1984 leaving behind his wife, two sons and three daughters. Late Sh. Ram Chand initially had been running the business on the said shop with his father late Sh. Ghoshu Mal. In 1980, Sh. Ram Chand allowed his father to run the said shop as the mere licensee in 1980.

c. That Sh. Ghoshu Mal was found guilty of cheating and forgery in the criminal investigation relating to forgery of Sh. Ram Chand's signatures on an affidavit.

d. That late Sh. Laxman Dass hatched a criminal conspiracy to grab the disputed property and it was he who prevailed upon Sh. Ghoshu Mal to prepare the above said forged documents as he had been running the business on the said shop.

e. That Late Sh. Ram Chand filed a suit for possession in 1982 and during the proceedings, he died. The application of his wife and legal heirs to be placed in place of the original plaintiff was dismissed as being time barred.

f. That Sh. Ram Chand revoked the license of the said property against Sh. Laxman Dass, Sh. Ghoshu Mal, Smt. Kanta Devi and M/s Sindhi Shoe House in April 1980 and in view of the same Sh. Laxman Dass and his legal heirs have no right to use the disputed property.

g. That foul play is being carried out by someone in the Directorate of Estates as

in connivance with Sh. Ghoshu Mal and Sh. Laxman Dass, it is being showed that the property was in the joint name of Sh. Ram Chand and Sh. Ghoshu Mal.

h. That Smt. Sita Devi W/o Sh. Ram Chand had made representation on 29.06.1984 in writing for the substitution of the disputed property in her name and the legal heirs of Sh. Ram Chand filed a no objection statement. Despite this, no action was taken by the Directorate of Estate. That for the same purpose Smt. Sita Devi got a notice issued u/s 80 of the Code to the Directorate of Estate but no reply has been received from the latter.

i. That in the Court of Sh. Om Prakash, M.M., Delhi, Sh. B.K Bajaj, U.D.C Directorate of Estate (Marketing) appeared as witness and told the court that according to records the allotment of disputed property was exclusively made in the name of Sh. Ram Chand vide letter dated 25.01.1951.

j. That Sh. Ghoshu Mal has 3 sons and two daughters.

31. Sh. Chandu Lal, S/o Sh. Ram Chand in cross-examination stated that his father did not give any declaration and his signatures on any such document have been forged. He stated that Sh. Ghoshu Mal could not have made a Will in favour of Sh. Laxman Dass as he did not own the disputed property. He further stated that there has been no family settlement to the effect that Sh. Ram Chand should reside in Shop No. 5, Sarojini Nagar.

32. In the present case, the petitioner namely Sh. Laxman Dass died on 1.5.1997. The legal heirs of the petitioner namely Smt. Kanta Devi, Sh. Jai Kishan Ahuja and Smt. Meena Vermani filed IA No. 9182/1998 for substitution of their name after the death of Sh. Laxman Dass, deceased petitioner and for grant of probate in their favour. Smt. Maya Devi D/o late Smt. Rami Bai (daughter of late Sh. Ghoshu Mal) has also filed a no-objection certificate on 4th February, 2009 stating that she is the only legal heir of late Smt. Rami Bai and has no objection to the grant of letters of administration in favour of Sh. Jai Kishan Ahuja.

33. The Will was executed on 18.3.1985 and registered on 6.4.1985. The suit filed by Smt. Seeta Devi w/o Sh. Ram Chand for mandatory injunction is pending in the court of Civil Judge, Tis Hazari, Delhi. However, the suit filed by Sh. Ram Chand for declaration that he is the lawful allottee of the shop has been dismissed vide order dated 31.3.1988. Another suit filed by Sh. Ram Chand for recovery of possession of the shop against Sh. Ghoshu Mal was also dismissed vide order dated 28.3.1987. It is also apparent that the complaint filed by Sh. Ram Chand against Sh. Ghoshu Mal alleging forged signatures on the declaration was also dismissed as being time barred and Sh. Ghoshu Mal was acquitted of the charges u/s 420 of the Indian Penal Code.

34. In the case of Kanwarjit Singh Dhillon Vs. Hardyal Singh Dhillon and Others, it was held that the functions of a probate court are to see that the Will executed by the testator was actually executed by him in a sound disposing state of mind without coercion or undue influence and that the same was duly attested. The

probate court is also not competent to determine the question of title to the suit properties nor can it go into the question whether the suit properties bequeathed by the Will were joint ancestral properties or acquired properties of the testator.

35. In the case of *Ishwardeo Narain Singh Vs. Sm. Kamta Devi and Others*, it was held that the court of probate is only concerned with the question as to whether the document put forward as the last Will and testament of a deceased person was duly executed and attested in accordance with law and whether at the time of such execution the testator had sound disposing mind. The question whether a particular bequest is good or bad is not within the purview of the Probate Court. Therefore, the only issue in probate proceedings relates to the genuineness and due execution of the Will and the court itself is under duty to determine the same and preserve the original Will in its custody. The Succession Act is a self-contained code insofar as the question of making an application for probate, grant or refusal of probate or an appeal carried against the decision of the Probate Court. This is clearly manifested in the fascicule of the provisions of the Act. The probate proceedings shall be conducted by the Probate Court in the manner prescribed in the Act and in no other ways. The grant of probate with a copy of the Will annexed establishes conclusively as to the appointment of the executor and the valid execution of the Will. Thus it does no more than establish the factum of the Will and the legal character of the executor. Probate Court does not decide any question of title or of the existence of the property itself.

36. Section 276 of the Succession Act provides the procedure to obtain probate. The petition shall be verified in the manner prescribed u/s 280 of the Act and also further be verified by at least one of the witnesses to the Will in the manner and to the effect specified therein. Section 217 expressly provides that save as otherwise provided by this Act or by any other law for the time being in force, all grants of probate with the Will annexed ... shall be made or carried out, as the case may be, in accordance with the provisions of Part IX. Section 222 declares that (1) Probate shall be granted only to an executor appointed by the Will. (2) The appointment may be expressed or by necessary implication. Section 224 gives power to appoint several executors. Section 227 declares the effect of probate thus: Probate of a Will when granted establishes the Will from the death of the testator, and renders valid all intermediate acts of the executor as such.

37. From the above stated facts, it can be clearly seen that in a petition for grant of probate, the Probate Court is only to check the genuineness of the Will. Questions of title are not decided in proceedings for the grant of probate or for letters of administration.

38. In the case of *Govind M. Asrani Vs. Jairam Asrani and Another*, it was held that in a pending application for the issue of probate, if the sole executor dies before providing the Will, it will be competent for a legatee or any other person interested, to intervene and continue the proceedings to prove the Will and obtain letters of administration in his own right. But it must, at the same time, be recognized that the impleading of the legatee or person interested in the

place of the deceased executor would involve an alteration of the petition which was originally filed for the issue of probate into one for the grant of letters of administration. But that is a technicality not affecting the substance of the matters to be decided in the case.

39. As regards the dispute about the number of LR's of Sh, Ghoshu Mal, there is no force in the submissions of the respondents that parties have not been properly arrayed in the petition. It is pertinent to mention here that on 13th July, 1992 counsel for the petitioner stated that she was not aware of the other LR's of late Sh. Ghoshu Mal besides Sh. Mohan Dass and Ms. Ratna Devi and prayed for issuing notice to all the LR's of deceased Sh. Ram Chand, son of Late Sh. Ghoshu Mal. It appears from the record that the petitioner has not denied that late Sh. Ram Chand is the son of late Sh. Ghoshu Mal, however inconsistent statements have been made by him from time to time. Since the objections were filed by the legal heirs of late Sh. Ram Chand after issuing notice and were considered by the court, there is no force in the objection.

40. In view of the abovesaid discussion, this Court is not to go into the question whether Sh. Ghoshu Mal has title to the suit property or not. Considering the evidence of the attestors of witness as on the Will and examination in chief of Sh. M.K. Gupta, there can be no doubt that the Will in dispute is a genuine document executed by Sh. Ghoshu Mal in a sound disposing state of mind without coercion and undue influence and that the same was duly attested.

41. In the instant case, the probate/letter of administration is, therefore, granted in favour of legal heirs of the deceased petitioner Sh. Laxman Das i.e. Sh. Jai Kishan Ahuja, Smt. Kanta Devi and Smt. Meena Vermani subject to their filing necessary court fees and surety bond on the value of immovable property as stated in the Will dated 18th March, 1985. Petition disposed of.