
(2005) 02 P&H CK 0102

In the Punjab And Haryana At Chandigarh

Case No : C.M. No. 164-CII of 2005 in Probate Petition No. 3 of 1999

National West Minister Bank

APPELLANT

Vs

General Public and Others

RESPONDENT

Date of Decision : 17-02-2005

Acts Referred:

Evidence Act, 1872 — Section 82, 86
General Clauses Act, 1897 — Section 3
Succession Act, 1925 — Section 276

Citation : (2005) 140 PLR 22

Hon'ble Judges : Hemant Gupta, J

Bench : Single Bench

Advocate : P.S. Patwalia and Sanjeev, for the Appellant; Gurcharan Dass, for the Respondent

Judgement

Hemant Gupta, J.—The petitioner has filed the present petition u/s 276 of the Indian Succession Act, 1925, for probate of Will dated 6.2.1993 executed by Mr. Paul Gill, annexed with the petition.

2. Mr. Paul Gill, alias Darshan Singh Gill died on 08.02.1995. He had executed a Will dated 06.12.1993. The petitioner is named as executor and the beneficiary as per aforesaid Will.

3. Notice of the petition was issued. Mr. Vikas Singh Gill son of Shri Paul Gill, respondent No. 2, filed written statement contesting the claim of the petitioner. It was pleaded that he is the only legal heir of deceased Paul Gill.

4. On May 12, 2003, on the basis of reliance upon order of granting probate by the High Court of Justice. The District Probate Registry at Bristol vide order dated August 22, 1995, this court passed the order returning the original order dated August 22, 1995, with liberty to the petitioner to again file the aforesaid order after getting the same authenticated in accordance with law. Subsequently, the petitioner has moved an application for admitting the said original order dated August 22, 1995, as duly authenticated order and admissible in evidence.

5. I have heard learned counsel for the parties after issuing notice of the application.

6. Learned counsel for the petitioner has vehemently relied upon Section 82 of the Indian Evidence Act, 1872, to contend that the order produced by the petitioner is a duly authenticated order and admissible in evidence without any further proof. On the other hand, learned counsel for respondent No. 2 has pointed out that the order requires to be authenticated in terms of Section 86 of the Indian Evidence Act. Before considering the respective contentions of the parties, it would be advantageous to consider the order dated 22.08.1995 produced by the petitioner during the course of hearing. On the first page of the said order, it is recorded that the "copies of this grant are not valid unless they bear the impressed seal of the Court." Each page of the said order bears the impressed seal of the Family Division Of The High Court Of Justice. The first and last page also contain certificate of District Probate Registrar to the following effect:-

"I certify that this is a true copy of the Original Will of Paul Gill proved at Bristol District Probate Registry on the 22nd day of August, 1995.

Dated this 21st day of August, 2002

Sd/- District Probate Registrar."

7. Section 82 of the Indian Evidence Act, 1872, (hereinafter to be referred to "the Act"), carries a presumption as to document admissible in England without proof of seal or signature and Section 86 of the Act deals with the presumption as to certified copies of foreign judicial records other than the judicial record of any country not forming part of India or of Her Majesty's dominions. Sections 82 and 86 of the Act read as under:-

"82. Presumption as to document admissible in England without proof of seal or signature:- When any document is produced before any Court, purporting to be a document which, by the law in force for the time being in England or Ireland, would be admissible in proof of any particular in any Court of Justice in England or Ireland, without proof of the seal or stamp or signature authenticating it, or of the judicial or official character claimed by the person by whom it purports to be signed, the Court shall presume that such seal, stamp or signature is genuine, and that the person signing it held, at the time when he signed it, the judicial or official character which he claims, and the document shall be admissible for the same purpose for which it would be admissible in England or Ireland.

86. Presumption as to certified copies of foreign judicial records:- The Court may presume that any document purporting to be a certified copy of any record of any country not forming part of India or Her Majesty's dominions is genuine and accurate, if the document purports to be certified in any manner which is certified by any representative of the Central Government in or for such country to be the manner commonly in use in that country for the certification of copies

of judicial records.

An officer who, with respect to any territory or place not forming part of India or Her Majesty's Dominions, is a Political Agent therefore, as defined in Section 3, Clause (43), of the General Clauses Act, 1897 (10 of 1897), shall, for the purposes of this Section, be deemed to be a representative of the Central Government in and for the country comprising that territory or place.

8. A perusal of the order dated 27.08.1995 leaves no manner of doubt that copy of the said order is not valid unless it bears the impressed seal of the Court. Each of the page of the document bears the impressed seal of the Family Division of the High Court of Justice. In addition to the impressed seal, the first page as well as the last page carries the endorsement as mentioned aforesaid. Learned counsel for the respondent could not refer to any provisions of law of England to show that any more authentication, attestation or certification was required in respect of order dated 22.08.1995 to make it admissible in evidence in that country. Therefore, in the absence of any factor to rebut the presumption that the seat, stamp and signatures on the said document are genuine, the said document is admissible in evidence in England and consequently in India by virtue of Section 82 of the Act.

9. The reliance on Section 86 of the Act by the respondent is not applicable in respect of certified copy of record of Her Majesty's Dominions. Section 86 of the Act deals with judicial record of any country not forming part of India or of Her Majesty's Dominions. Since, the document sought to be produced is from England, Section 86 of the Act is not applicable to the facts of the present case.

Consequently, it is held that the order dated 22.08.1995 produced by the petitioner is duly certified and authenticated copy of the order and thus admissible in evidence.