
(1998) 10 DEL CK 0092
In the Delhi High Court
Case No : Probate No. 24 of 1992

Nidhi Chopra and Another	Vs	APPELLANT
State		RESPONDENT

Date of Decision : 01-10-1998

Acts Referred:

Succession Act, 1925 — Section 232, 234, 63

Citation : (1998) 76 DLT 382

Hon'ble Judges : M.S.A. Siddiqui, J

Bench : Single Bench

Advocate : Prag Tripathi, for the Appellant; S. Chatterjee, for the Respondent

Final Decision : Dismissed

Judgement

M.S.A. Siddiqui, J.—The petitioners have filed this application for grant of Probate/letters of administration in respect of a Will alleged to have been executed by their father late Amritlal Chopra on 6th May, 1984.

2. According to the petitioners, the Will dated 6th May, 1984 executed by their father late Amritlal Chopra was registered at Bombay. Amritlal Chopra died on 14th December, 1985 leaving behind the following legal representatives :

1. Ms. Nidhi Chopra, petitioner No. 1,
2. Ms. Anu Chopra, petitioner No. 2,
3. Mrs. Pritam Devi Chopra,
4. Mrs. Kusum Chopra.

3. The applicants are daughters of the testator. By the Will dated 6th May, 1984, the testator appointed the following persons as executors of the said Will.

1. Shri Justice Michael Saldanha, Sitting Judge of the High Court of Judicature, Bombay.

2. Shri H.K.Choksi, Nirlon Synthetics and Fibres Chemicals Ltd., Goregaon East, Bombay-400063.

3. Shri C.S. Shetty, Nirlon Synthetics and Fibres Chemicals Ltd., Goregaon East, Bombay-400063.

4. On 6th April, 1991, the petitioners addressed a letter to the said executors requesting them to withdraw as executors as the Will had not been executed despite the passage of more than six years from the death of the testator. In response to the said letter, the executors consented to withdraw as executors of the said Will. According to the Will dated 6th May, 1984, the testator specifically indicated that no part of his estate shall vest or be bequeathed to the following relatives :

(i) Mr. Rajinder Chopra, (brother of the testator);

(ii) Mr. Ramesh Chopra, (brother of the testator);

(iii) Ms. Kusum Chopra, (ex-wife of the testator).

5. It is alleged that the petitioners, being beneficiaries under the Will dated 6th May, 1984 are entitled to letters of administration. Hence this petition.

6. Citations were issued to the respondents but they did not contest the proceedings.

7. At the outset, I must make it clear that the original Will dated 6th May, 1984 has not been produced before the Court. The petitioners have not examined any of the attesting witnesses or executors named in the said Will. Need less to say that the burden was on the petitioners to prove due and valid execution of the Will. In *H. Venkatachala Iyengar Vs. B.N. Thimmajamma and Others*, , it was held that a Will has to be proved like any other document except as to the special requirements of attestation, prescribed by Section 63 of the Indian Succession Act. It is also relevant to mention that u/s 224 of the Succession Act, where several executors are appointed, probable may be granted to them all simultaneously or at different times. Sections 231, 232 and 234 of the Succession Act show in what cases and to whom letters of administration may be granted. Section 231 provides that if an executor renounces or fails to accept an executorship within the time allowed, the Will may be proved and letters of administration may be granted to the person who would be entitled to administration in case of intestacy. Section 232 provides that where no executor has been appointed, where an executor is legally incapable or refuses to act or has died, or where an executor dies after proving the Will but before administering the estate a universal or a residuary legatee may be admitted to prove the Will and letters of administration with the Will annexed may be granted to him. Section 234 provides that when there is no executor and no residuary legatee or he declines or is incapable to act, or cannot be found, the person or persons who would be entitled to the administration of the estate of the deceased if he had died intestate, or any other legatee having a beneficial

interest, or a creditor, may be admitted to prove the Will, and letters of administration may be granted to him or them accordingly. No one is given any locus standi, any power to take any steps to prove the Will unless and until one of the conditions laid down in the Sections are satisfied, and it certainly seems to be implied that the person who proves the Will shall be entitled to the letter of administration. It was stated in the petition that pursuant to a request made by the petitioner, all the executors had consented to withdraw as executors of the Will in question. Surprisingly, the petitioners did not adduce any evidence to prove the said fact. The petitioners have also failed to prove the due execution of the Will in accordance with law. Consequently, they are not entitled to grant of Probate/letters of administration.

8. For the foregoing reasons, the petition is dismissed. Pursuant to the order dated 6th January, 1998 of this Court, the State Bank of India has deposited in the Registry a sum of Rs.2,35,812.65 belonging to the testator. The petitioners are not entitled to get the said amount unless and until they establish their entitlement for the same in accordance with law. It is, Therefore, ordered that the said amount shall be kept in a fixed deposit for a period of two years.