
(2004) 05 P&H CK 0110
In the Punjab And Haryana At Chandigarh
Case No : Probate No. 3 of 2003

Raj Kumari Dhawan

APPELLANT

Vs

General Public and Others

RESPONDENT

Date of Decision : 07-05-2004

Acts Referred:

Evidence Act, 1872 — Section 90
Succession Act, 1925 — Section 276

Citation : (2004) 138 PLR 142

Hon'ble Judges : M.M. Kumar, J

Bench : Single Bench

Advocate : K.S. Grewal, for the Appellant; K.S. Cheema, for the Respondent

Judgement

M.M. Kumar, J.—This petition filed by Smt. Raj Kumari Dhawan widow of late Shri Purshotam Lal Dhawan u/s 276 read with Section 300 of the Indian Succession Act, 1925 (for brevity "the Act") prays for grant of Letters of Administration of the Will dated 14.12.1956 executed by the husband of the petitioner late Shri Purshotam Lal Dhawan in her favour.

2. According to the averments made in the petition late OP. Capt. Purshotam Lal Dhawan husband of petitioner had executed a privileged will on 14.12.1956 while serving in the Air Force. He bequeathed all his movable and immovable assets in favour of the petitioner. A copy of the Will dated 14.12.1956 has been placed on record as Annexure "B". The testator retired from Air Force in 1966, The Will was executed in accordance with the Defence Service Regulations and the same has been witnessed by two officers namely Sq. Ld. Jaspal Singh and Flt. Lt. N.K. Midha. Both the officers were posted at Air force Station, Palam (New Delhi). Both of them were serving alongwith the husband of the petitioner. It has been asserted that after long 47 years it has not been possible for the petitioner to locate the whereabouts of the attesting witnesses inspite of efforts for that purpose. The details of the assets in the form of various shares have been attached as Annexure "C". There are total 726 shares with different companies

with a race value of Rs. 7260.00 only.

3. The petitioner legatee has also relied upon the proceedings undertaken before the Estate Officer, Chandigarh for the transfer of House No. 565, Sector 36-B, Chandigarh. On 9.5.2003, an application duly supported by the Will dated 14.12.1956 and other documents was submitted to the Estate Officer, Chandigarh. Affidavits of all the three daughters executed on 8.5.2003 signifying no objection to the transfer of the house in the name of the petitioner on the basis of the Will were attached. On 11.6.2003, the Estate Officer desired public notice to be published in two daily newspapers and ordered deposit of expenses which was duly complied with. Accordingly a public notice was published in English as well as Hindi dailies namely Times of India and Dainik Bhaskar dated 4.7.2003. No objection was raised by any one from the general public and accordingly, the house was transferred by the Estate Officer vide office order No. 43857/RP 16106/TG-IV-19.6.2003. A copy of the same has been placed on record as Annexure "D".

4. It is further appropriate to mention that the present petition is supported by the affidavit of the petitioner and the death certificate of the testator who is stated to have died on 26.2.2003.

5. An application has also been filed for dispensing with the notification to the general public claiming that already a public notice has been published on 4.7.2003 on behalf of the petitioner in the English and Hindi Dailies namely Times of India and the Dainik Bhaskar and the house stands transferred. The application was declined on 9.4.2003.

6. Shri K.S. Cheema, Advocate has put in appearance on behalf of respondent Nos. 2 to 4 and had filed affidavits of respondent Nos.2 to 4 who are the daughters of the testator as well as the petitioner. None of the daughters have raised any objection to the grant of probate to the petitioner. It is further appropriate to mention that public notice of the petition was published in the English Daily, the Indian Express on 14.1.2004 and no objection has been filed by any member of the public.

7. An affidavit has been filed, in the Court today, by Ms. Shakun Tandon, respondent No. 3, daughter of the petitioner as well as the testator who has stated that her father executed a Will on 14.12.1956 bequeathing his all movable and immovable assets to her mother who is petitioner in the instant probate case. She further stated that she had seen the Will, a certified copy of which is Ex.P2. She has identified the signatures of her father as she had seen him writing and signing on various documents. She being familiar with his signatures has been able to identify the same. After the filing of the affidavit, I have asked her various questions and had recorded the following order:

"Mrs. Shakun Tandon, respondent No. 3, who is present in Court has filed an affidavit wherein she has stated that her father had executed a Will on 14.12.1956 bequeathing all his movable and immovable assets to his mother

which is the subject matter in the instant petition. One searching question asked by the Court was to identify the signatures of her father. She stated that Mr. Purshotam Lal Dhawan, the father of the deponent, had been writing letters to her and even otherwise she has seen him writing and signing. To a specific question confronting the signatures on the Will, the deponent stated that the signatures on the Will are of her father. She has also owned the earlier affidavit filed on 8.5.2003 before the Estate Officer, Chandigarh. Opportunity to cross examination was given but neither of the counsel preferred to cross-examine.)"

8. No question was asked in the cross-examination despite an opportunity having been granted.

9. The Will dated 14,12.1956 in respect of which probate has been sought falls in the category of privileged will within the meaning of Section 65 of the 1925 Act. According to Section 66 of the 1925 Act, the mode of making and rules for execution of privileged Will have been given and the same reads as under:

66. Mode of making, and rules for executing, privileged Wills.- (1) Privileged Wills may be in writing, or may be made by word of mouth.

(2) The execution of privileged Wills shall be governed by the following rules:-

(a) The Will may be written wholly by the testator with his own hand. In such case it need not be signed or attested.

(b) It may be written wholly or in part by another person, and signed by the testator. In such case it need not be attested.

(c) If the instrument purporting to be a Will is written wholly or in part by another person and is not signed by the testator, it shall be deemed to be his Will, if it is shown that it was written by the testators directions of that he recognised it as his Will.

(d) If it appears on the face of the instrument that the execution of it in the manner intended by the testator was not completed, the instrument shall not, by reason of that circumstance, be invalid, provided that his non execution of it can be reasonably ascribed to some cause other than the abandonment of the testamentary intentions expressed in the instrument.

(e) If the soldier (airman) or mariner has written instructions for the preparation of his Will, but has died before it could be prepared and executed, such instructions shall be considered to constitute his Will.

(f) If the soldier, (airman) or mariner has, in the presence of two witnesses, given verbal instructions for the preparation of his Will, and they have been reduced into writing in his life time, but he has died before the instrument could be prepared and executed, such instructions shall be considered to constitute his Will, although they may not have been reduced into writing in his presence, nor read over to him.

(g) The soldier, (airman) or mariner may make a Will by word of mouth by declaring his intentions before two witnesses present at the same time.

(h) A Will made by word of mouth shall be null at the expiration of one month after the testator, being still alive, has ceased to be entitled to make a privileged Will.

10. After the Will is written by the testator with his own hands then it does not even need to be signed but if it is written wholly or partly by another person and signed by the testator it does not even need to be attested. Even signatures are not required to be shown if that then Will was written on the directions of the testator of that he wants to records the document as his Will. Clauses (e) and (f) of Section 66 of the 192. Act deals with the preparation of the Will on the directions of the testator where the testator has died before its execution. In the present case, the Will has been typed in English with the Signatures of the testator namely Shri P.L. Dhawan who was working as Sqd. Ld. at that time. The Will has been attested by two witnesses who have recorded an acknowledgement that Shri P.L.Dhawan had signed in their presence and in the presence of each other and the witnesses have signed in the presence of each other and the witnesses have signed in the presence of the testator.

11. It is further pertinent to mention that u/s 90 of the 1872 Act when any document is purporting to be thirty years old, the Court may presume the signatures and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested. The question whether Section 90 of the 1872 Act applies to the Will which is more than 30 years old has been considered by this Court in the case of Rami v. Sohan Singh and Ors. 1991 P.L.J. 587 and it has been held that Section 90 of the 1872 Act would be applicable even to those Wills which are more than 30 years old. In the instant case additionally Ms. Shakun Tandon, Respondent No. 3 has identified the signature of her father.

12. In view of the above, I am of the considered view that the instant petition deserves to be allowed and probate is accordingly ordered to be granted to the petitioner for administration of the assets of the testator with a copy of the Will annexed thereto on depositing with the Registry the amount required for the purchase of stamps papers of the requisite value and denomination necessary for its issuance.