

(2019) 05 DEL CK 0530
In the Delhi High Court
Case No : TEST.CAS. No. 67 Of 2011

Rajan Bery

APPELLANT

Vs

State (Govt. Of Nct Of Delhi)

RESPONDENT

Date of Decision : 06-05-2019

Acts Referred:

Citation : (2019) 05 DEL CK 0530

Hon'ble Judges : J.R. Midha, J

Bench : Single Bench

Advocate : Mala Narayan, Veena Goshwami, Neha Dawal

Final Decision : Allowed

Judgement

J.R. Midha, J

1. The petitioner is seeking letters of administration with Will annexed in respect of the Will dated 16th September, 2003 of his father, late Baikunth Nath Bery.

2. Late Baikunth Nath Bery expired on 13th November, 2006. Late Baikunth Nath Bery had two sons namely Rajan Bery (petitioner) and Rajiv Bery; and three daughters, namely Lata Sarin (respondent No.2), Rita Kohli (respondent No.3) and Pramila Wahi. Pramila Wahi expired on 25th December, 2001 and was survived by her husband, Ashok Wahi (respondent No.4) and three sons, namely Dhruv Wahi (respondent No.5), Ankush Wahi (respondent No.6) and Anuj Wahi (respondent No.7).

3. Rajiv Bery, son of the testator went missing since 25th September 1992 and the testator mentioned in his Will that if Rajiv Bery does not return within one year from the execution of the Will, the entire estate shall be inherited by the petitioner. According to the petitioner, Rajiv Bery was not traceable ever since he left the home in 25th September, 1992 and he has been declared dead by the judgment and the decree dated 06th July, 2006 (Ex. PW1/3 and PW1/4).

4. As per the Will dated 16th September, 2003, Late Baikunth Nath Bery

bequeathed his estate i.e. industrial property at B-67, Naraina Industrial Area, Phase-II, New Delhi; residential house at J-36, Sector-12, Noida, UP; 50% share in partnership firm, M/s Sanchit International; family jewellery of his wife; and savings bank account of Bank of Baroda, New Delhi devolve upon the petitioner, if his second son, Rajiv Bery does not turn up within one year of the execution of this Will. As regards the daughters, the testator bequeathed Rs.10,00,000/- each to Lata Sarin and Rita Kohli and the said amount to be adjusted against any loan given to them. The testator bequeathed Rs.10,000/- each to his sister-in-laws, Sumero Bery and Shashi Wahal. The testator further stated in his Will that in case his both sons were not alive, then all his estate would devolve upon his two daughters, Lata Sarin and Rita Kohli in equal proportion.

5. The notice of this petition was issued to the respondents as well as to the public at large by publication in the newspaper. Respondents No.2 to 7 filed the objections which were later withdrawn. Reference be made to the orders dated 30th October, 2017 and 08th March, 2018.

6. The petitioner appeared in the witness box as PW1. The petitioner examined Neeraj Beri, one of the witnesses to the Will as PW2. The petitioner examined clerk from the office of Sub Registrar-III as PW3.

7. The petitioner deposed that the deceased was a permanent resident of Noida at the time of his death and he left behind the following immovable and movable properties, namely industrial property at B-67, Naraina Industrial Area, Phase-II, New Delhi; residential house at J-36, Sector-12, Noida, UP; 50% share in partnership firm, M/s Sanchit International; family jewellery of his wife; and savings bank account of Bank of Baroda. The Will dated 16th September, 2003 is Ex.PW1/1; death certificate of the deceased is Ex.PW1/2; judgment and the decree dated 06th July, 2006 are Ex. PW1/3 and PW1/4 respectively; bank statements and cheques are Ex.PW1/5 (Colly) according to which the petitioner had given Rs.67,77,276/- to respondent No.2; Rs.45,00,000/- to respondent No.3; and Rs.16,00,000/- to husband of late Pramila Wahi; minutes of the meeting dated 23rd February, 2011 is Ex.PW1/6; original affidavit and declaration of Sumero Bery sent by her to Rahul Khare on 09th April, 2011 are Ex.PW1/7 and Ex.PW1/8 respectively; and Schedule of the immovable properties along with their valuation is Ex.PW1/9.

8. The petitioner examined the attesting witness, Neeraj Beri as PW2 who deposed that he was related to the deceased as his grandmother and wife of the deceased were real sisters. On 16th September, 2003, the deceased called PW-2 on telephone and requested him to be a witness of the Will whereupon PW2 reached the house of the deceased i.e. J-36, Sector-12, Noida. PW2 deposed that the deceased told him that he wanted to make a Will in favour of his elder and younger son. PW2 deposed that Vishnu Sahai Sarin, the son-in-law of the deceased, was also present as the other attesting witness. PW2 deposed that he along with Vishnu Sahai Sarin and Late Baikunth Nath Bery went to the office of Sub-Registrar. The deceased had a typed Will with him and the deceased signed

the Will and both the witnesses signed the Will in the presence of deceased and in the presence of each other. PW2 deposed that the deceased was perfectly fine, physically and mentally, at the time of making and registration of the Will. The original Will is Ex.PW2/1.

9. The petitioner examined the clerk from the Sub-Registrar office as PW3 who confirmed that Will, Ex.PW2/1 was registered with Sub-Registrar III, Gautam Budh Nagar, Noida as Document no. 493 in Additional Book no.3, Volume 90 at pages 177 to 184 on 16th September, 2003.

10. Learned counsel for the petitioner urged at the time of the hearing that the petitioner has validly proved the Will by examining PW2 who deposed that the deceased signed the Will in presence of two witnesses who signed the Will in the presence of deceased and in the presence of each other. PW2 deposed that the deceased was of sound disposing mind at the time of execution of the Will. Learned counsel for the petitioner further urged that respondents No.2 to 7 have withdrawn their objections which is recorded in the orders dated 30th October, 2017 and 08th March, 2018. It was further submitted that notwithstanding withdrawal of the objections, there was no merit in their objections. It was submitted that the respondents raised an objection of limitation which had no merit considering that the petitioner filed the probate petition immediately upon the Will being disputed by the respondents. It was further submitted that the respondent set up a codicil dated 19th September, 2003 and also filed the probate petition bearing Test Cas. No. 69/2014 based on fabricated unregistered codicil which was strongly contested by the petitioner whereupon the respondents withdrew their petition on 30th October, 2017.

11. This Court is satisfied that the Will dated 16th September, 2003 is the true and last Will of late Baikunth Nath Bery. There is no impediment to the issuance of the letters of administration in respect of the Will of the deceased as this Court is not required to go into the question of title of the deceased in respect of the above mentioned properties in these proceedings.

12. The petition is allowed and the Letters of Administration annexed with the Will dated 16th September, 2003 of late Baikunth Nath Bery is granted in favour of the petitioner.

13. The Letters of Administration be issued after filing of the requisite Court fees and bonds by the petitioner.

14. Copy of this judgment be given dasti to counsel for the petitioner under signature of Court Master.