

(2009) 02 DEL CK 0237

In the Delhi High Court

Case No : I.A. No. 10014 of 2007 in Probate Case No. 48 of 1993

Registrar University of Delhi

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 06-02-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10
Succession Act, 1925 — Section 237, 276

Citation : (2009) 7 ILR Delhi 59

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : Atul Batra, in I.A. No. 10014/2007, P.S.P. Ahluwalia with Ms. Beenashaw Soni, for the Appellant; Sanjay Sood, Advocate for LRs. of Respondent No. 7 and Mr. Atul Batra, Advocate for applicant in I.A. No. 10014/2007, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Singh, J.—By this order, I shall dispose of the application filed under Order 1 Rule 10 CPC for impleadment of Shri Sandeep Nayar as party to the present proceedings. The brief facts are stated hereinafter. Sh. Roshan Lal S/o Sh. Tara Chand had at the time of his death i.e. 2nd February, 1997, a fixed place of abode at Cottage No. 13, West Patel Nagar, New Delhi. He was the absolute owner of this property.

2. Sh. Roshan Lal offered to give by way of Will the said property to the petitioner. He offered that after his death, till such time his wife was alive, the University would be entitled to rent in respect of one shop in the said property and his wife would be entitled to not only the share in the property but also to the rent which may accrue in respect of other shops in the said property.

3. It is stated that after discussions with the officials of the University of Delhi (petitioner), the deceased Sh. Roshan Lal executed a Will on 13.3.1974, bequeathing the said property in its favour, The wife of the deceased Shri Roshan

Lal expired on 12th May, 1992.

4. On 29th July, 1993, the petitioner University of Delhi through Registrar has filed the present petition u/s 276 read with Section 237 of the Indian Succession Act against the seven respondents with the prayer that the probate of the Will dated 13th March, 1974 executed by Late Shri Roshan Lal be granted in favour of the petitioner. The respondent Nos. 2 to 5 are the daughters and respondent Nos. 6 and 7 are the son of deceased Shri Roshan Lal.

5. The probate was contested only by respondent on 7/objector who has expired and his legal representatives have been brought on record by order dated 28th August, 2008 passed in I.A. No. 6185/2008.

6. The evidence of the petitioner was recorded on 20th April, 2006. The statement of respondent No. 7/Shri Sushil Nayar was recorded as RW-1 on 27th August, 2007. The statement of other two witnesses of respondent No. 7 RW-2 and RW-3 have also been recorded. When RW-3 Mr. Raghubir, LDC, Ministry of Home Affairs, Jaisalmer House, New Delhi appeared before the Joint Registrar on 12th February, 2008 stated that he has not brought the summoned record as the same is not available in his office.

7. The present application under Order 1 Rule 10 has been filed by Shri Sandeep Nayar, son of respondent No. 6 and grandson of the deceased Shri Roshan Lal. I have heard learned counsel for the parties. The application filed by the applicant has been opposed by the petitioner on the grounds that: (a) that the applicant has no locus standi to move the present application; (b) that the applicant is not a necessary party and has no legal right to join the proceedings; (c) that the application has merely been filed in order to delay the proceedings and to deprive the petitioner of his legal rights over the suit property; and (d) the application is not maintainable as same has been filed at belated stage.

8. It is not dispute that the father of the applicant Shri Subhash Nayar respondent No. 6 has not contested the matter. The present application has been filed by the applicant after the expiry of 14 years in the pending litigation. No valid explanation has been given in the application as to why this application is not filed earlier, in case the applicant has any interest or right in the said property. It is also not in dispute that the applicant and the family members of respondent Nos. 6 and 7 are residing together in the same property.

9. In the application, it is averred that the applicant came to know about the present litigation only on 14th August, 2007 from the proceedings which were pending before the Delhi Women Commission with respect to family related problems and the applicant interacted with his father in this regard. After wards, the present application is filed.

10. As per the record, this matter is already ripe for final hearing as evidence of the parties has been recorded. The objections raised by respondent No. 7 and the present applicant for grant of probate are same, i.e. the property bearing

Cottage No. 13, West Patel Nagar, New Delhi was allotted to Shri Roshan Lal under the Displaced Persons Compensation and Rehabilitation Act and the same was allotted out of funds received by Shri Roshan Lal in lieu of the ancestral property in Lahore. Without going into the merits of the case as the matter is at the final stage, in my considered view, the present application filed by the applicant is belated and not maintainable as it has been filed after 14 years of filing of probate proceedings. The father of the applicant has also not contested the probate. The reasons mentioned in the application by the applicant for delay are not satisfactory and believable and therefore, cannot be acceptable. Even, prima facie no evidence has been placed by the applicant to prove his statement made in the application and in the absence of any valid reason, I find the application is misconceived and not maintainable. It is hereby dismissed. No costs.

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List this matter on 13th March, 2009 for further directions.