

(2008) 12 DEL CK 0139
In the Delhi High Court
Case No : Test Case No. 27 of 2005

R.K. Sharma

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 18-12-2008

Acts Referred:

Succession Act, 1925 — Section 276, 74, 82, 85

Citation : AIR 2009 Delhi 81 : (2008) 13 ILR Delhi 20

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : P.K. Bakshi, for the Appellant; None, for the Respondent

Judgement

Hima Kohli, J.—The petitioner has filed the present petition u/s 276 of the Indian Succession Act, 1925 seeking Letter of Administration in respect of a registered Will dated 22.2.1990 executed by his mother, late Smt. Mohani Sharma who expired on 29.4.1999 in Delhi. The husband of the deceased, Smt. Mohani Sharma, Sh. Nar Singh Nath Sharma had predeceased her. She was survived by 7 daughters and 2 sons including the petitioner herein. The names of all the relations of the deceased are indicated at page 11 of the paper book (Ex.PW-1/3).

2. The present petition for grant of Letter of Administration was filed on 28.2.2005. Notice in the present petition was issued on 19.7.2005, returnable on 5.9.2005. A citation of the present petition was got published in the newspaper "The Statesman" (New Delhi Edition) dated 26.8.2005 and as one of the relations was residing in Pune, a citation was directed to be published in the newspaper, "The Times of India" (Maharashtra Edition). The publication is, however, not on the record, though it is stated on behalf of the petitioner that necessary steps in this regard were taken, and the said relation had filed her no objection to grant of Letter of Administration.

3. After service was effected upon the respondents, they entered appearance. While respondents No. 2 to 6 and 9 to 11 gave their consent to grant of Letter of

Administration in favour of the petitioner by filing their affidavits dated 17.5.2006, respondents No. 7 and 8 namely, Mrs. Neelam Sharma and Shri Rohit Sharma filed objections. However, during the pendency of the present proceedings, the aforesaid relations withdrew their objections, which was duly recorded in the order dated 4.8.2008.

4. The Will (Ex.PW-1/2) of which Letter of Administration is sought by the petitioner, is a duly registered Will. It was got registered with the Office of the Sub-Registrar, Delhi, vide registration No. 672 in Additional Book No. -III Volume No. 541 on pages 167 to 168 on 22.2.1990. The said Will is shown to have been attested by 2 witnesses, namely, Shri R. Jayendran and Mr. M.K. Gupta. Shri R. Jayendran, one of the witnesses to the Will, has filed an affidavit dated 29.4.2005 by way of evidence and has deposed that the deceased testatrix, Smt. Mohani Sharma executed her Will on 22.2.1990 in his presence and in the presence of the other attesting witness, Shri M.K. Gupta. He further deposed that at the time of execution of her Will, the deceased testatrix was in perfect state of health and deposing mind and she executed the Will voluntarily, without any coercion or external pressure. The witness stated that he saw the said testatrix signing the Will after acknowledging the same to be correct, in his presence.

5. The petitioner has also filed his own affidavit dated 16.12.2008 by way of evidence, wherein he has reiterated the averments made in the petition as correct. He has proved the death certificate of the deceased testatrix (Ex.PW-1/1). The Will dated 22.2.1990 is exhibited as Ex.PW-1/2. A perusal of the Will indicates that the deceased testatrix has mentioned the names of all her children, including her seven daughters and two sons. In respect of her seven daughters, she stated that she and her husband had spent a lot of amount on their marriages, and they were all happily married and well settled with their husbands. The deceased further stated that she had performed her duties and given out of her personal funds to her daughters, amounts on various occasions and hence, they did not require any monetary right out of the properties owned by the testatrix.

6. So far as Shri Vinod Sharma, the younger son of the deceased testatrix was concerned, it has been mentioned in the Will that he had accumulated money and property from his own earnings and from the voluntary help rendered by the deceased and hence he was not given any right, title or interest in the property of the deceased. Rather, the deceased made a mention of the fact that she was unhappy with his attitude and behavior after the demise of her husband and he had not cooperated in family matters.

7. In respect of the petitioner, the elder son of the deceased testatrix, it is stated in the Will that he was serving and extending co-operation to the deceased who lived with him after the death of her husband and that he was very obedient and faithful to her. After observing that she was very happy with him and had not given him much money to settle in his life, the deceased testatrix while not in so many words declaring the petitioner as the sole beneficiary of the Will, went on

to hold that her other legal heirs, successors, dependents and relatives shall have no right, title and interest whatsoever in the movable and immovable properties of the deceased and they were debarred from claiming her assets. However, in the first para of the Will, she clarified that the same was made by her in favour of Shri R.K. Sharma, the petitioner herein.

8. Although, there are now no objections against grant of Letter of Administration in favour of the petitioner, it is necessary to deal with the issue of construction of the Will by way of an abundant caution. In this context, it is relevant to refer to Chapter VI of the Indian Succession Act, 1925. Chapter VI of the Indian Succession Act, 1925 is entitled "Of the construction of Wills". Section 74 stipulates that it is not necessary that any technical words or terms of art be used in a Will, but only that the wordings be such that the intention of the testator can be known therefrom. Section 82 of the said Act stipulates that the meaning of any Clause in a Will is to be collected from the entire instrument, and all its parts are to be construed with reference to each other. Section 85 of the aforesaid Act mandates that no part of a Will shall be rejected as destitute of meaning if it is possible to put a reasonable construction upon it. In this regard, Counsel for the petitioner relies upon the following judgments:

1. Navneet Lal alias Rangi Vs. Gokul and Others,
2. AIR 2003 2528 (SC)

9. In the case of Navneet Lal @ Rangi (supra), the Supreme Court has observed as below:

8. From the earlier decisions of this Court the following principles, inter alia, are well established:

(1) In construing a document whether in English or in vernacular the fundamental rule is to ascertain the intention from the words used; the surrounding circumstances are to be considered; but that is only for the purpose of finding out the intended meaning of the words which have actually been employed. Ram Gopal Vs. Nand Lal and Others,

(2) In construing the language of the will the court is entitled to put itself into the testator's armchair Venkata Narasimha v. Parthasarathy (1913) 41 I. A 51 and is bound to bear in mind also other matters than merely the words used. It must consider the surrounding circumstances, the position of the testator, his family relationship, the probability that he would use words in a particular sense.... But all this is solely as an aid to arriving at a right construction of the will, and to ascertain the meaning of its language when used by that particular testator in that document. Venkata Narasimha's case (supra) and Gnanambal Ammal Vs. T. Raju Ayyar and Others,

(3) The true intention of the testator has to be gathered not by attaching importance to isolated expressions but by reading the will as a whole with all its provisions and ignoring none of them as redundant or contradictory Raj Bajrang

Bahadur Singh Vs. Thakurain Bakhtraj Kuer,

(4) The court must accept, if possible, such construction as would give to every expression some effect rather than that which would render any of the expressions inoperative. The court will look at the circumstances under which the testator makes his will, such as the state of his property, of his family and the like. Where apparently conflicting dispositions can be reconciled by giving full effect to every word used in a document, such a construction should be accepted instead of a construction which would have the effect of cutting down the clear meaning of the words used by the testator. Further, where one of the two reasonable constructions would lead to intestacy, that should be discarded in favour of a construction which does not create any such hiatus. *Pearey Lal Vs. Rameshwar Das*,

(5) It is one of the cardinal principles of construction of wills that to the extent that it is legally possible effect should be given to every disposition contained in the will unless the law prevents effect being given to it. Of course, if there are two repugnant provisions conferring successive interests, if the first interest created is valid the subsequent interest cannot take effect but a Court of construction will proceed to the farthest extent to avoid repugnancy, so that effect could be given as far as possible to every testamentary intention contained in the will. *Ramachandra Shenoy and Another Vs. Mrs. Hilda Brite and Others*,

10. In the case of *Bajrang Factory Ltd. and Another Vs. University of Calcutta and Others*, , the Supreme Court has observed that with a view to ascertain the intention of the maker of the Will, not only the terms thereof are required to be taken into consideration, but also the circumstances attending thereto. Hence, the whole Will must be considered for the said purpose and not merely a particular part thereof. When the Will is read in its entirety, can be given effect to, it is imperative that nothing should be read therein to invalidate the same.

11. Similarly, in the case of *Rajrani Sehgal Vs. Parshottam Lal and Others*, , it was observed as below:

(8) It is settled law that in construing a will, the court has to read, and keep in mind the whole of the document, and then determine as to what was the dominant intention of the testator and give effect to the same accordingly. It will be expedient to take note of rule of interpretation in respect to construction of wills, which as held in *Bondada Manumallaswami and Another Vs. Piniseti Chinna Narayanaswami and Others*, . is to construe a will in such a manner, so as to give effect as far as possible, to all the words used by the testator, and the true way to do so would be to form an opinion apart from the decided cases and then to see whether the decided cases required any modification of that opinion, not to begin by considering how far the will in question resembles other wills upon which decisions have been given.

(9) A similar note of caution was struck by the Supreme Court in *Ramachandra Shenoy and Another Vs. Mrs. Hilda Brite and Others*, , *Ramachandra Shenoy and*

Anr. v. Mrs. Hilda Brite and Ors. laying down that in the matter of construction of a will, authorities or precedents are of no help, as each will has to be construed in its own terms, in the setting in which the Clauses occur.

12. In the case of Gnanambal Ammal Vs. T. Raju Ayyar and Others, the Supreme Court while dealing with the aspect of language of the Will and the manner in which it was to be considered observed as below:

10. The cardinal maxim to be observed by courts in constructing a will is to endeavour to ascertain the intentions of the testator. This intentions has to be gathered primarily from the language of the document which is to be read as a whole without indulging in any conjecture or speculation as to what the testator would have done if he had been better informed or better advised. In constructing the language of the will as the Privy Council observed in Venkata Narasimha v. Parthasarthy 42 I.A. 51 at p. 70, "the courts are entitled and bound to bear in mind other matters than merely the words used. They must consider the surrounding circumstances, the position of the testator, his family relationship, the probability that he would use words in a particular sense, and many other things which are often summed up in the somewhat picturesque figure "The court is entitled to put itself into the testator's armchair".... But all this is solely as an aid to arriving at a right construction of the will, and to ascertain the meaning of its language when used by that particular testator in that document. As soon as the construction is settled, the duty of the court is to carry out the intentions as expressed, and none other. The court is in no case justified in adding to testamentary dispositions.... In all cases it must loyally carry out the will as properly construed, and this duty is universal, and is true alike of wills of every nationality and every religion or rank of life.

13. In the case of Veerattalingam and others Vs. Ramesh and others, , the Supreme Court observed as below:

8. It is well-settled that a court while construing a will should try to ascertain the intention of the testator to be gathered primarily from the language of the document; but while so doing the surrounding circumstances, the position of the testator, his family relationship and the probability that he used the words in a particular sense also must be taken into account. They lend a valuable aid in arriving at the correct construction of the will. Since these considerations are changing from person to person, it is seldom profitable to compare the words of one will with those of another or to try to discover which of the wills upon which the decisions have been given in reported cases, the disputed will approximates closely. Recourse to precedents, therefore, should be confined for the purpose of general principle of construction only, which, by now, are well-settled. There is still another reason as to why the construction put on certain expressions in a will should not be applied to a similar expression in the will under question for, a will has to be considered and construed as a whole, and not piecemeal. It follows that a fair and reasonable construction of the same expression may vary from will to will. For these reasons it has been again and again held that in the matter

of construction of a will, authorities or precedents are of no help as each will has to be construed in its own terms and in the setting in which the Clauses occur see Ramachandra Shenoy and Another Vs. Mrs. Hilda Brite and Others, . The risk in not appreciating this wholesome rule is demonstrated by the case before us.

14. Keeping in mind the aforesaid principles of construction of Will which is that as far as possible, effect should be given to every deposition contained in the Will unless law prevents effect being given to it and the true intention of the testator has to be gathered not by attaching importance to isolated expressions, but by reading the Will as a whole, the present Will has to be examined. In the present case, keeping in mind the entire trend of thought of the deceased testatrix, as set out in the Will dated 22.2.1990, it is clearly established that there was no doubt in her mind that she was devolving her movable and immovable assets exclusively in favour of the petitioner herein. Hence, Counsel for the petitioner is justified in submitting that there is no dispute with regard to the devolvement under the Will, the intention of the deceased testatrix being clear in this regard.

15. In view of the above and having regard to the facts and circumstances of the preset case, it is ordered that the Letter of Administration in respect of Will (Ex.PW-1/2) be granted in favour of the petitioner on his depositing the requisite court fee and on his furnishing the administration bond, for due administration of the estate of the deceased, in accordance with her wishes. The original Will Ex.PW-1/2 shall be kept in safe custody.

16. The petition is disposed of.