

(2001) 12 DEL CK 0107
In the Delhi High Court
Case No : Probate 30 of 1991

Satish Chandra Gupta

APPELLANT

Vs

The State and Others

RESPONDENT

Date of Decision : 21-12-2001

Acts Referred:

Citation : (2002) 3 RCR(Civil) 122

Hon'ble Judges : Vinod Sagar Aggarwal, J

Bench : Single Bench

Advocate : Atul Kumar, for the Appellant; Nemo, for the Respondent

Final Decision : Allowed

Judgement

V.S. Aggarwal, J.—Satish Chander Gupta, hereinafter described as the petitioner has filed the petition for grant of probate of the will dated 30th October, 1981 of Mrs. Bishan Devi or in the alternative for grant of Letters of Administration pertaining to the will referred to above .

2. The facts alleged are the Mrs. Bishan Devi, who was governed by the Mitakhara School of Hindu Law died at Delhi on 2nd January, 1988. She had executed her last will at Delhi on 30th October, 1981 in presence of two witnesses, namely Hemlata and Rajiv Gupta. At that time, she was in full possession of her mind and senses. Respondents 2 to 6 are the sons and daughters of the deceased. In addition to that Kailash Chandra and Ramesh Chandra, her two sons had predeceased her. Respondents 7 to 13 are the children of the said predeceased sons of Mrs. Bishan Devi. It is claimed that because of the said will applicant is entitled to administer the estate of the deceased Bishan Devi. Hence the present petition.

3. Contest has been offered basically by respondents 3 and 7 to 10. They had denied the execution of the said will while respondents 2, 4, 5, 6, 10, 11, 12 and 13 had filed their no objection for grant of the probate.

4. On 25th January, 2001 this court had granted last opportunity to respondent no. 3 to be examined as a witness but on payment of Rs. 10,000/- as costs. But on 10th July, 2001 there was no appearance on behalf of either of the respondents hence they were proceeded ex parte.

5. Keeping in view the pleadings of the parties on 26th October, 1993 this court had framed the following issues -

1(a) Whether Smt. Bishan Devi executed a will in favor of the petitioner on 20.10.1981 as alleged in para no. 3 of the petition ?

1(b) If so, whether the same is legally and validly executed will.

2. To what relief, if any, the petitioners entitled?

6. Issues 1(a) and 1(b) : Both the issues are inter connected and Therefore can conveniently be taken up together. In support of these issues, the petitioner examined Ms. Hemlata. She stated that deceased Bishan Devi was the sister of her father. She had executed a will Ex. PW1/1. The witnesses added that she had signed this will as an attesting witness in the presence of Bishan Devi at point "B". Rajiv Gupta had also signed the will. First of all it was Bishan Devi who had signed the will. The witness was cross-examined but it cannot be termed that by virtue of cross-examination the testimony of the witnesses had been shaken. In this process will must be held to have been duly proved. There is no other evidence on the record to indicate that the will can be termed to be bogus or sham or it was not validly executed. Issues Therefore are decided in favor of the petitioner.

7. For these reasons recorded above the petition is allowed and petitioner is granted probate of will dated 30th October, 1981 purported to have been executed by Bishan Devi. In other words the petition is allowed. It would be so done when the petitioner pay the necessary court fees.