
(2018) 01 DEL CK 0308
In the Delhi High Court
Case No : TEST.CAS. No. 39 Of 2014

Shakuntla Rani	Vs	APPELLANT
State & Ors		RESPONDENT

Date of Decision : 11-01-2018

Acts Referred:

Indian Succession Act, 1925 — Section 273

Citation : (2018) 01 DEL CK 0308

Hon'ble Judges : Jayant Nath, J

Bench : Single Bench

Advocate : R.S.Mishra, Geetanjali, Anand Mishra

Final Decision : Disposed Of

Judgement

Jayant Nath, J

1. This petition is filed under Section 273 of Indian Succession Act, 1925 for grant of probate in favour of the petitioner with respect to the Registered Will dated 22.12.2009 which was executed by Late Shri Chandra Pal Gupta (hereinafter referred to as "the deceased") who has expired on 23.06.2011 at Virginia, USA.

2. It has been averred in the petition that the petitioner is the wife of the deceased and the Respondent Nos. 2 to 4 are the daughters and son of the deceased. The petitioner and respondent Nos.2 to 4 are the only legal heirs of the deceased.

3. As per order dated 16.09.2016 it was noted by this court that despite service of notice of this petition to the Respondent No. 1, none has appeared. Hence, Respondent No. 1 was proceeded ex-parte. It was further noted that Respondent Nos. 2 to 4 have already filed their No- Objection supported by an affidavit. Hence, there is no contesting respondent in this matter. Evidence was recorded of the petitioner and Dr. Ajay Kumar Gupta. Arguments have been heard.

4. The petitioner (PW1) tendered her affidavit by way of evidence wherein she has deposed that she was the wife of the deceased and that the couple had 3 children, namely, Respondent Nos.2 to 4. She has also deposed that she has been appointed as the sole successor, administrator, liquidator and receiver of all the assets by the deceased. She has stated that the deceased expired on 23.06.2011 at Virginia, USA. The original death certificate is marked as Ex.PW1/B. She further states that the Will dated 22.12.2009 is the last and final Will of the deceased, she has exhibited the will of the deceased, which is marked as Ex.PW1/A. She has further stated that the deceased was of sound mind and health at the time of execution of the said Will, which was duly attested by the witnesses. It is also stated that there were two attesting witnesses, namely, Mrs.Kamalam Jaganathan and Mr.Antony OR.

5. The petitioner points out that at the time of filing this present petition, the petitioner was under the impression that she would be in a position to produce the said attesting witnesses for recording their deposition but subsequently she learnt that the said witnesses' whereabouts are not known to her. Thereafter, the petitioner was able to locate one Dr.Ajay Kumar Gupta (PW2), who was working in the same educational institution in Delhi wherein the deceased and the two attesting witnesses were working, to identify the signatures of the deceased and the attesting witnesses. PW2 has filed his affidavit by way of evidence marked as Ex.PW2/X. As per the said affidavit of Dr.Ajay Kumar Gupta, the deceased was running educational institutions in UAE. Mrs. Kamalam Jaganathan and Mr.Antony OR were also working as teachers in the said institutes. Dr. Ajay Kumar Gupta used to work along with the deceased and the said attesting witnesses in Delhi, before they moved to UAE. Hence, Dr.Ajay Kumar Gupta has seen Mrs. Kamalam Jaganathan and Mr.Antony OR writing and signing. Having seen the Will, Dr.Ajay Kumar Gupta has identified and recognized the signatures of the deceased and the attesting witnesses.

6. I have perused the statements of the petitioner and Dr. Ajay Kumar Gupta. In view of the above, the court is satisfied that the petitioner is the wife of the deceased and has succeeded in proving that the deceased has executed the will dated 22.12.2009 in sound deposing mind in favour of the petitioner. The petitioner has further proved that the said will was the last will and testament of Late Shri Chandra Pal Gupta. Dr. Ajay Kumar Gupta has identified the signatures of the deceased and the attesting witnesses.

7. In this view of the matter, I hold that the petitioner has been successful in proving due execution and attestation of the will dated 22.12.2009 of Late Shri Chandra Pal Gupta. Since, the petitioner is the sole beneficiary of the said Will, She is declared the absolute owner with respect of the properties mentioned in the said will. Hence, a probate is issued in favour of the executor to the Will i.e. petitioner, subject to her furnishing the requisite court fees in terms of the valuation report and execution of administration and surety bond.

8. No orders as to cost. Petition is disposed off.