
(2011) 01 DEL CK 0151
In the Delhi High Court
Case No : Test CAS. 57 of 1998

Shri Arun Rathi and Others

APPELLANT

Vs

N.C.T. of Delhi

RESPONDENT

Date of Decision : 21-01-2011

Acts Referred:

Citation : (2011) 177 DLT 389

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Subhash Chawla, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

V.K. Jain, J.—This is a petition for grant of probate in respect of the Will dated 28.2.1983 executed by Late Smt. Chautha Devi, as modified by the Codicil dated 14.3.1993. Smt. Chautha Devi expired on 7.4.1993 leaving nine legal heirs mentioned in para 5 of the petition.

2. The citation was published in newspapers in terms of the order dated 6.1.1999 and notice was also served on the Chief Revenue Controlling Authority. The notice was also issued to the non-applicant legal heirs of Late Smt. Chautha Devi. All non-applicants legal heirs other than non-applicants legal heirs No. 2 & 3 Shri Ram Chander Rathi and Punam Chand Rathi, have filed NOC to the grant of probate. Objections to grant of probate have not been filed by non-applicant legal heirs No. 2 & 3 namely Ram Chander Rathi and Punam Chand Rathi despite service of notice.

3. The Petitioners have filed four affidavits by way of evidence. In his affidavit by way of evidence, Petitioner No. 2 Anil Rathi, who is also an attesting witness to the Will executed by Late Smt. Chautha Devi, has stated that in her life time Late Smt. Chautha Devi had executed one Will dated 28.2.1983. He further stated that the Will dated 28.2.1983 which is exhibited as PW-1/B was drafted and prepared by his elder brother Shri Prem Rattan Rathi who was also the eldest son

of Late Smt. Chautha Devi. On the instructions of testatrix, according to him, the translation of the Will was read over to the testatrix. She put her signatures and thumb impressions on it after understanding its contents and being satisfied that the Will had been prepared and drafted as per her instructions. He has identified the signatures and thumb impressions of Late Smt. Chautha Devi at marks "X1" to "X6" on the Will Ex.-PW-1/B and has stated that the signatures and thumb impressions were put on the Will in his presence as also in the presence of Prem Rattan Rathi, Ram Chander Rathi, Punam Chand Rathi, Kamlesh Kumar Rathi, Arun Kumar Rathi, Tara Maheshwari, Kusum Daga, M.L. Aggarwal and Uma Ram. He has also identified the signatures of Prem Rattan Rathi at mark "B-1". He also stated that all the attesting witnesses named by him had signed in the presence of each other. He has identified signatures of Prem Rattan Rathi at mark "B2", signatures of Ram Chander Rathi at mark "C", signatures of Punam Chand Rathi at mark "D", signatures of Kamlesh Kumar Rathi at mark "E", signatures of Arun Rathi at mark "F" and his own signatures at mark "G", on the Will Ex.PW-1/B. He further identified signatures of Tara Maheshwari at mark "H", signatures of Mrs. Kusum Daga at mark "I", signatures of M.L. Aggarwal at mark "K" on the Will Ex.PW-1/B. He further stated that at the time of executing the Will, Late Smt. Chautha Devi was in good health and perfect state of mind and she had executed the Will without any pressure or coercion from any person. According to him, Dr. K.K. Rustogi was also present, had examined Late Smt. Chautha Devi at the time of execution of the Will and also signed the Will at mark "L", stating therein that Late Smt. Chautha Devi was in good health and sound disposing state of mind. The Will was later registered by the testatrix on 12.12.1984 with the office of Sub-Registrar, Delhi as document No. 5488, in additional book No. 3 at pages 95 to 100.

4. PW-2 Urmil Rathi is the wife of PW-1 Anil Rathi. She is also an attesting witness to the Codicil dated 14.3.1993 to the Will dated 28.2.1983 executed by late Smt. Chautha Devi. In her affidavit by way of evidence, she has stated that on 14.3.1993, Late Smt. Chautha Devi had executed the Codicil Ex.PW-1/C which was drafted and prepared by Ms. Nandni Sahni, Advocate, on her instructions. The Codicil was later registered with Sub-Registrar, New Delhi. Since Smt. Chautha Devi at that time was ill and was admitted in Ashlok Hospital at Safdarjung, New Delhi, the Sub-Registrar was requested to visit her in the hospital and register the Codicil there. The Sub-Registrar came to hospital on 31.3.1993 and the Codicil was registered there, on that date, as document No. 1505, in additional book No. 3, volume No. 34, at pages 98 to 102. She has identified thumb impression of Smt. Chautha Devi at mark Y1 to Y9 on the Codicil Ex.PW-1/C as also her photograph on the document. She also stated that Ms. Nandni Sahni had also read over the contents of the Codicil in vernacular language to Smt. Chautha Devi in her presence. According to her, Punam Chand Rathi, M.L. Aggarwal, Dr. K.K. Rastogi and other witnesses were also present at the time of execution of Codicil. She further stated that Smt. Chautha Devi put her thumb impression on the Codicil in the presence of witnesses after

understanding its contents and thereafter it was signed by the attesting witnesses including herself. She also stated that Dr. K.K. Rastogi had examined the Codicil at the time of execution of Codicil and then put his signatures on the document. The witness has identified her own signatures at mark R on the Codicil as also the signatures of Punam Chand Rathi at mark S, signatures of M.L. Aggarwal at mark "T", signatures of Ms. Nandni Sahni, Advocate at mark "U" and Dr. K.K. Rastogi at mark "V". She further stated that Smt. Chautha Devi was in good health and sound disposing state of mind at the time of execution of Codicil. Petitioner No. 1 Mr. Arun Rathi who has been examined as PW-3 has, in his affidavit, proved the Will Ex.PW-1/B executed by late Smt. Chautha Devi on 28.2.1983. According to this witness also the Will was drafted by his elder brother Shri Prem Rattan Rathi, eldest son of Late Smt. Chautha Devi and its translation was read over to the testatrix who signed the document after understanding the contents of the Will and being satisfied that it had been prepared and drafted as per her instructions. He has identified the signatures and thumb impressions of the testatrix at mark "X1" to "X6" on the Will. He further stated that Smt. Chautha Devi had put her signatures and the thumb impressions on her Will in his presence and also in the presence of Prem Rattan Rathi, Ram Chander Rathi, Punam Chand Rathi, Kamlesh Kumar Rathi, Anil Rathi, Tara Maheshwari, Kusum Daga, M.L. Aggarwal and Shri Uma Ram. He has identified signatures of all the attesting witnesses at mark "B-2" and mark "C" to "K". He also confirmed that Smt. Chautha Devi was in good health and perfect state of mind when she executed the Will Ex.PW-1/B and that Dr. K.K. Rustogi who was also present at the time of execution of the Will, had examined her and had also signed the Will at mark L stating therein that Chautha Devi was in good health and sound disposing state of mind. The Petitioners have also examined Shri Uma Ram as PW-4. Uma Ram, in his affidavit, states that he is also the attesting witnesses to the Will dated 28.2.1983 executed by late Smt. Chautha Devi on 28.2.1983. He has confirmed that the Hindi translation of the Will was read over to the testatrix and she signed after understanding the contents of the Will and being satisfied that it had been prepared and drafted as per her instructions. He also identified her signatures and thumb impressions on all the pages of Will Ex.PW-1/B at marks X1 to X6 and stated that the testatrix had put her signatures and thumb impressions on the Will in his presence as well as other witnesses. He has also identified his own signatures as also the signatures of other witnesses on the Will Ex.PW-1/B.

5. The execution of the Will Ex.PW-1/B has been duly proved by producing as many as three attesting witnesses namely Mr. Anil Rathi, Mr. Arun Rathi and Mr. Uma Ram PW-1, PW-3 and PW-4 respectively in the absence of any evidence to the contrary, I see no reason to believe the deposition of these witnesses. They have also stated that late Smt. Chautha Devi was in a sound state of health and mind when she executed the Will Ex.PW-1/B which was drafted by Prem Rattan Rathi, on her instructions, and was read over and explained to her in vernacular language before she put her signatures and thumb impressions mark on it. The

endorsement made by Dr. K.K. Rustogi on the Will Ex.PW-1/B also shows that she was medically fit at the time she executed the Will. The endorsement made on the Will in Hindi which is signed by Smt. Chautha Devi shows that the Hindi translation of the Will had been read over and explained to her. The affidavits of PW-1, PW-3 and PW-4 also show that the Will was signed and thumb impressions were put by late Smt. Chautha Devi in the presence of attesting witnesses. The Will has, therefore, be duly proved by the Petitioners.

6. The Codicil EX.PW-1/C has also been proved by examining one of its attesting witnesses namely Smt. Urmil Rathi. Her testimony shows that the Codicil was also read over and explained to Smt. Chautha Devi before it was signed by her in the presence of the attesting witnesses including Smt. Urmil Rathi. Vide Codicil Ex.PW-1/C, late Smt. Chautha Devi changed the executors of the Will.

7. Section 68 of Evidence Act, to the extent, it is relevant, provides that if a document is required by law to be attested, it shall not be used as evidence until at least one attesting witness has been called for the purpose of proving its execution if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence." Since the Will is a document required by law to be attested by at least two witnesses, the Petitioner could have proved it by producing one of the attesting witnesses of the Will. In the case before this Court, the Petitioner has examined three attesting witnesses to the WILL and one attesting witness to the Codicil has thus thereby duly proved the documents in terms of the requirement laid down in Section 68 of the Evidence Act.

8. A bare perusal of Section 63(c) of Indian Succession Act would show that a Will is required to be attested by two or more witnesses and each of them must have seen the Testator sign or affixing his mark to the Will or should have seen some other person signing the Will in the presence and under the directions of the Testator or should have received a personal acknowledgement from the Testator with respect to his signature or mark or signature of the another person who signs the Will in the presence and under the direction of the Testator and it is also necessary that each witness should sign the Will in the presence of the Testator. This, however, is not the requirement of law in India that both the attesting witnesses should also sign in the presence of each other. Same is the legal position with respect to execution of a Codicil to the Will.

9. For the reasons stated in the preceding paragraphs, I hold that the Petitioners being executors of the Will Ex.PW-1/B executed by late Smt. Chautha Devi on 28.2.1983 read with Codicil executed by her on 12.3.1993, are entitled to probate sought by them.

10. The report of the Chief Revenue Controlling Authority is stated to have already been received.

11. It is, therefore, directed that a probate of the Will Ex.PW-1/B read with Codicil Ex.PW-1/C be granted to the Petitioners on payment of the prescribed court fee.