
(2008) 04 DEL CK 0193
In the Delhi High Court
Case No : Test. Cas. No. 49 of 2006

Shri Judge Pal Khera

APPELLANT

Vs

Smt. Chand Rani Khera and Others

RESPONDENT

Date of Decision : 01-04-2008

Acts Referred:

Hindu Succession Act, 1956 — Section 16
Succession Act, 1925 — Section 232, 276, 278

Citation : (2008) 04 DEL CK 0193

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : P.D. Gupta, P.C. Dhingra and P. Chaudhary, for the Appellant; Gita Dhingra, for R-1, Gagan Kumar Gupta, for R-2 and Neeraj Yadav, for R-7/State, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Narayan Dhingra, J.—This Petition u/s 276/278 of the Indian Succession Act has been filed by the son of the deceased Shri Ram Lal Khera seeking probate and Letter of Administration in respect of Will dated 31st May, 1994 executed by deceased Shri Ram Lal Khera. In the Petition, he made wife, son and daughters of Shri Ram Lal Khera as Respondents No. 1-6. In the Petition for grant of Probate, the Petitioner has made pleadings which are not relevant for the purpose of grant of Probate. In his pleadings, he has pleaded that he has right over the property mentioned in the Will and some litigation was already going on in respect of the property where he was proceeded ex-parte. He has annexed the list of properties and credits of the deceased and sought grant of Probate in his own favor. The Petition is not verified by any of the attesting witnesses to the Will and the Petitioner filed an affidavit stating that he tried to contact the attesting witnesses to the Will of his father; one of the witnesses Shri Prem Kumar Sethi was not traceable and other attesting witness Shri L.P.Maikhuri refused to verify the Petition and stated that he would give evidence in the Court when summoned. Reply has been filed by Respondent No. 1, who is wife of the

deceased. In the reply, she has stated that this petition was a counter blast to a suit filed by her for declaration and injunction before the Civil Judge, Delhi and Petitioner and Respondent No. 2 made statement before the Civil Judge that they would not dispossess the answering Respondent from the property and would not create any third party interest during her lifetime. She has also raised preliminary objection that Petition was not maintainable, the Will executed by deceased was in her favor and she was made absolute and exclusive owner of the properties by her late husband. By virtue of this Will, the properties covered under Will were her istridhan and the Petitioner was not entitled for probate.

2. Issue of maintainability was raised by the Respondent No. 1 that the Petition for probate was not maintainable during her lifetime, she being the beneficiary mentioned in the Will and Probate Petition by the Petitioner, if any, could lie only after her lifetime.

3. The arguments on question of maintainability were heard from both the sides. It is argued by the Counsel for the Petitioner that a Probate Petition can be filed even by a stranger. He relied on Ramchandra Sahu Vs. Sm. Safeli Ghose and Others, , wherein the Court held that when no person, who had a preferential claim comes forward to apply for Letter of Administration, it is discretionary for the Court to grant Letters of Administration to a person, who is interested in the property though he is a stranger. Petitioner also relied upon Pari Hingorani v. Shakuntala AIR 1987 Del 307 wherein this Court observed that Probate can be granted only to an executor appointed by the Will. If no one has been appointed executor by the Will, only a Letter of Administration can be granted, if the Will is proved to be valid. When deceased in the Will has not appointed an executor, Section 232 provides that a universal or a residuary legatee may be admitted to prove the Will and Letters of Administration may be granted to him of the whole estate. He has also relied on Leo Sequiera Vs. Magdalene Sequiera Bai and Others, wherein the Court observed that in a case of Joint Will, even if one of the Testators dies, the Will becomes operative in respect of his property and operation is not postponed till the date of all.

4. Counsel for the Petitioner has pleaded that in the present case, Will created only life interest in favor of the Respondent No. 1 and after her death the property was to go to the Petitioner and his son and he being one of the beneficiaries had a right to ask for Letter of Administration.

5. In this case genuineness of the Will is not in dispute. Will is in favor of Respondent No. 1 wherein she had been given absolute right over the property left behind by the deceased. The relevant part of the Will is as under:

4. That I bequeath and devise that after my demise my all movable and immovable properties shall go and devolve upon my wife Smt. Chand Rani Khera absolutely and exclusively to the exclusion of all others. The said beneficiary Smt. Chand Rani Khera can use, hold and enjoy my movable and immovable properties after my death in any manner as she likes.

5. That I further bequeath and devise that after my demise and demise of my wife said Smt. Chand Rani Khera the rest of the property(s) of mine whether stand in my name or substituted in the name of my wife shall go and devolve upon my younger son Mr. Judge Pal Khera and my grand son Master Deepak Khera equally and absolutely to the exclusion of all others. My son Shri Ramesh Kumar Khera, his wife Smt.Rita Khera and their son and daughter, my four daughters Smt.Kamlesh Adlekha, Smt.Neelam Narula, Smt.Praveen Malhotra and Smt.Seema Dua and their legal heirs, and my daughter-in-law Smt.Sunita Khera shall have no right, title or interest in my properties whether movable or immovable whatsoever i.e. I hereby debar them absolutely from my properties.

6. That my son Shri Judge Pal Khera and grandson Master Deepak Khera can use, hold and enjoy the properties of mine leaving behind by my wife after her death. I hereby make a provision that my son Judge Pal Khera shall have no right to sell, mortgage, gift or dispose off in any manner the properties devolved upon them till my grand son will not attain the age of 18 years.

6. Paragraph 4 of the Will makes it clear that the deceased bequeathed and devised all his movable and immovable properties upon his wife i.e. Respondent No. 1 absolutely and exclusively to the exclusion of all others. He specifically provided that Respondent No. 1 shall use, hold or enjoy both movable and immovable properties of the deceased after his death in any manner as she likes. Thus, the bequeathal of the properties was absolute, unequivocal and liberty was given to Respondent No. 1 to enjoy properties in any manner she liked, which only shows that she was to become the absolute owner of the properties. In next para, deceased stated that after demise of his wife, the rest of the property(s) which stood in his name or substituted in the name of his wife should devolve upon his younger son and grand son i.e. Petitioner and his son. It is thus, clear that by using "rest of the property(s)" deceased had in mind that his wife could sell the properties and use the properties in any manner she liked, and if, something was left that would go to the his son (Petitioner) and grand son i.e. Master Deepak Khera equally. In para 6 of the Will, he put restriction on his son i.e. Petitioner that he would have no right to sell, mortgage, gift or to dispose of the rest of property devolved upon him in any manner, till grandson attains the age of 18 years. It is clear that the deceased was very conscious in his mind about how the estate is to be protected. If he wanted that his wife would have no right to sell, mortgage, gift or dispose of the property, he would have put the same restriction on his wife in para 4 of the Will itself. The very fact that he did not put this restriction on the rights of his wife shows that the property was bequeathed absolutely to his wife and after the death of the Testator she became the absolute owner. Once she became the absolute owner, it is the right of Respondent No. 1 only to exercise her rights in respect of the properties and it is she, who can create a Will in respect of the properties. Deceased once having absolutely bequeathed the property in favor of his wife could not bequeath the properties of his wife to someone else. His wife became absolute owner of the estate also in terms of Section 16 of the Hindu Succession Act. After death of the

deceased Respondent No. 1 became absolute owner of the properties and the properties can be dealt with by her alone in the manner she likes. It is settled law that Court has to attempt harmonious construction so as to give effect to the terms of the Will in the manner in which the deceased desired and intended. The deceased and his wife both simultaneously executed Wills bequeathing his/her's properties in favor of other. Both had stated in the Wills that the other spouse was very devoted and loving and the property was being bequeathed in the name of other spouse and whatever was left over, after the lifetime, would go to the younger son i.e. Petitioner herein and grandson. Thus, the intention of the deceased was clear that the properties must go to his wife and if after the lifetime of wife something is left that only should go to his son and grandson. However, deceased may not be aware that once the properties go to his wife and she becomes the absolute owner, it is she, who has to exercise the right of writing a Will in respect of her properties.

7. The Petitioner, who is son of the Testator had no right, title or interest in the property as the Respondent No. 1 had become the absolute owner of the property under the Will. It is the discretion of Respondent No. 1 to execute a Will in respect of rest of her property. The property cannot be snatched from her on the basis of Will of the deceased alleging that it was a lifetime interest and not an absolute interest. I, Therefore, consider that the Petitioner is not entitled for the Probate of the Will. The Petition is hereby dismissed.