
(2016) 12 DEL CK 0103
In the Delhi High Court
Case No : Test Case 47 of 2014

Sunil Gupta

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 20-12-2016

Acts Referred:

Succession Act, 1925 — Section 276

Citation : (2017) 1 ADDelhi 547

Hon'ble Judges : Mr. R.K. Gauba, J.

Bench : Single Bench

Advocate : Mr. Vishnu Anand, Advocate, for the Petitioner; Mr. Dhanesh Relan, Advocate, for the Respondent No. 1/State

Final Decision : Disposed Off

Judgement

Mr. R.K. Gauba, J. - This petition was filed under Section 276 of the Indian Succession Act, 1925 seeking grant of probate of registered Will dated 24.07.2010 of late Sh. D.R. Gupta son of late Sh. Balwant Rai, then resident of N-155, Panchshila Park, New Delhi-110 017, he having died on 18.03.2014.

2. As per the averments set out in the petition, late Sh. D.R. Gupta (the testator of the Will) was a permanent resident of Delhi and during his lifetime had executed the Will dated 24.07.2010 (Ex. PW1/2) as his last testament and Will, in sound state of physical and mental health out of his own free will and volition in the presence of witnesses Pradeep Aggarwal (PW-2), son of Sh. H.R. Aggarwal, resident of A-1/48, Paschim Vihar, New Delhi-110 063 and Sh. Manoj Kumar (PW-3) son of Sh. Shyam Lal, resident of RZ-213 D/16, Tughlaqabad Extension, New Delhi-110019, it having been duly registered with Sub Registrar-V, New Delhi on the date of execution vide no.4,964 in book no. 3, vol.1, 842 at pages 139 to 140. According to the petitioner, late Sh. D.R. Gupta died on 18.03.2014, the death having been registered by the Registrar of Births and Deaths as per the death certificate (Ex. PW1/1). It is the case of the petitioner that at the time of the death, the deceased Sh. D.R. Gupta owned and possessed

properties, the details of which have been set out in Schedule A (Ex. PW1/3) appended to the petition, some of which include properties situated within the territorial jurisdiction of this court, the market value of such properties having been assessed at Rs. 7,64,34,284/-.

3. The petition declared the particulars of the near relatives of late Sh. D.R. Gupta as under :-

S.No. Name Relation with deceased Petitioner/Respondent

- 1 Smt. Bimla Gupta Wife Respondent no.2
- 2 Sh. Sunil Gupta Son Petitioner
- 3 Smt. Asha Gupta Daughter Respondent no.3
- 4 Smt. Aruna Jain Daughter Respondent no.4
- 5 Smt. Anita Beri Daughter Respondent no.5
- 6 Sh. Amit Jain Grandson Respondent no.6
- 7 Sh. Rahul Gupta Grandson Respondent no.7

4. The valuation of the properties bequeathed by the Will of which grant of probate is prayed, along with details of the liabilities left behind by the testator, have been set out in detail in schedule "D" (Ex. PW1/8) appended to the plaint which reads as under :-

"Details of all properties and be queathed by late Sh. D.R. Gupta under registered will dated 24.07.2010

S.No. Particulars Valuation (in Rs.) As per book value

- 1 House No. N-155, Panchshila Park, New Delhi 3,18,340/-
- 2 Multiplex Theatre, 1st and 2nd Floor, Pacific Mall, Mathura, C-1/B, Industrial Area Site-B, Mathura, Uttar Pradesh. 3,00,00,000/-
- 3 Agriculture Land bearing admeasuring 109 kanals 7 Marle at Siwana Mauja, Behrampur, Sub Tehsil, Sohna District, Gurgaon, Haryana 3,00,000/-
- 4 One-half share in Commercial Property bearing no.M-52, Ishwar Nagar, New Friends Colony, New Delhi. 1,58,78,245/-
- 5 One-half share in commercial property bearing no.M-53, Ishwar Nagar, New Friends Colony, New Delhi. 1,61,16,807/-
- 6 3 (Three) commercial flats bearing nos.108, G-1 & 2, Hotel "The Connaught", Shaheed Bhagat Singh Marg, New Delhi. 9,25,040/-
- 7 One-fourth share of the Area admeasuring 70,000 square feet super area for Multiplex in the Mall "Festival City" Ludhiana, situated at Village Quadian and Fagguwal, GT Road (NH-1), Ludhiana, Punjab. 3,50,00,000/-

8 Corolla Car 2,78,255/-
 9 Investments ? L&T Infra Bonds 40,000/-
 10 Loan to Ashoka Prom. & Developers 1,00,00,000/-
 11 Investments ? LIC Jeevan Akshay Policy 1,40,000/-
 12 Investments ? NSC 60,000/-
 13 Investments ? FD with ICICI Bank 77,302/-
 14 Investments ? PPF A/c Balance (as on 31.03.2014) 28,79,567/-
 15 Bank Balance ? ICICI (as on 31.03.2014) 6,60,391/-
 16 Bank Balance ? YES Bank (as on 31.03.2014) 35,42,667/-
 TOTAL (A) 11,62,16,614/-

Details of all liabilities of late Sh. D.R. Gupta

S.No. Particulars Amount (Rs.)

1 Security Deposit from Aerens for Multiplex Ludhiana 35,70,000/-
 2 Security Deposit from Reliance Mediaworks Ltd., Pacific Mall, Mathura 20,19,948/-
 3 Security Deposit from UASC for M-52 & 53 (1/2 share) Ishwar Nagar, New Delhi. 6,60,000/-
 4 Security Deposit from Max Life Insurance for M 52 & 53 (1/2 share) Ishwar Nagar, New Delhi. 7,50,000/-

TOTAL (B) 69,99,948

Net value = Value of all properties ? Value of all liabilities

= Total (A) ? Total (B)

= Rs. 11,62,16,614/- (-) Rs. 69,99,948/-

= Rs. 10,92,16,666/-"

5. It may be mentioned here that according to Schedule "C" appended to the petition (Ex. PW1/7), from amongst the above, the following properties were bequeathed by the Will in favour of the petitioner, their total value being worked out at Rs. 7,64,34,284/- :-

"Immovable properties bequeathed in favour of the petitioner

S.No. Properties

1 Agriculture Land admeasuring 109 kanals 7 Marle at Siwana Mauja, Behrampur, Sub Tehsil, Sohna District, Gurgaon, Haryana

2 One-half share in Commercial Property bearing no.M-52, Ishwar Nagar, New Friends Colony, New Delhi.

3 One-half share in commercial property bearing no.M-53, Ishwar Nagar, New Friends Colony, New Delhi.

Immovable properties vested with the petitioner after life interest of his mother

S.No. Properties

1 House No. N-155, Panchshila Park, New Delhi

2 Multiplex Theatre, 1st and 2nd Floor, Pacific Mall, Mathura, C-1/B, Industrial Area Site, Site-B, Mathura, Uttar Pradesh.

Movable properties bequeathed in favour of the petitioner

S.No. Properties

1 Corolla Car

2 Loan to Ashok Prom. & Developers

3 Yes Bank Balance

6. The petitioner stated that the other relatives (legal heirs) of deceased late Sh. D.R. Gupta had given no objection to the grant of Will in his favour and no other such application having been filed for grant of probate or letters of administration of the properties left behind by the testator, there was no legal impediment to such grant on the petition at hand, the petitioner having been appointed by the Will as the sole executor.

7. By order dated 07.05.2014, notice was issued to the State and to the Chief Revenue Controlling Officer with direction for valuation reports to be submitted in respect of the subject properties, this in addition to notices to the above mentioned close relatives of the deceased and also for publication of citation in the newspaper "Statesman" in its Delhi, Mathura and Ludhiana editions. The near relations of the deceased whose particulars were mentioned in the plaint, were duly served and appeared through counsel to submit no objection. The citation was duly published (Ex. PW1/4) in the newspaper "Statesman" dated 14.06.2014 published from New Delhi with circulation in Mathura and Ludhiana.

8. On 13.01.2016, it was submitted on behalf of the petitioner, at the hearing on the interim application, it being IA 508/2016 (under Section 151 CPC), that though the petition had been filed for grant of probate referring to bequest under the Will in respect of seven immovable properties, the petitioner was restricting his prayer for grant of probate only with reference to the following three properties :-

"a. 3 (Three) commercial flats bearing nos. 108, G-1 & 2, Hotel "The Connaught", Shaheed Bhagat Singh Marg, New Delhi.

b. One-fourth share of the Area admeasuring 70,000 square feet super area for Multiplex in the Mall "Festival City" Ludhiana, situated at Village Quadian and Fagguwal, GT Road (NH-1), Ludhiana, Punjab

c. Multiplex Theatre, Ist and 2nd Floor, Pacific Mall, Mathura, C-1/B, Industrial Area Site, Site-B, Mathura, Uttar Pradesh"

9. Pursuant to the directions given by the court, Sub-Divisional Magistrate, Chanakya Puri, New Delhi, has submitted a valuation report on 15.01.2015 (pages 66-67 of the paper book) stating that the three commercial flats in property known as "Hotel Connaught" New Delhi as mentioned above has been valued at Rs. 67,41,000/-. Further the Sub-Divisional Magistrate, Ludhiana (West) has submitted the valuation report (pages 109-115 of the paper book) in respect of the above mentioned property described as ?th share in the 70,000 sq. ft. super area for multiplex in the mall, "Festival City" at village Quadian and Fagguwal, GT Road (NH-1), Ludhiana, Punjab, it having been valued at Rs. 1,56,54,971/- inclusive of land value and cost of construction. Similarly, the Deputy Collector, Mathura has submitted the valuation report (pages 80-82 of the paper book) in respect of the property described as multiplex theatre, 1st and second floor, Pacific Mall, C-1/B Industrial Area Site, Site B, Mathura, Uttar Pradesh indicating it to be Rs. 3.54 Crores.

10. The petitioner examined himself (as PW-1) during the inquiry, deposing on the strength of his own affidavit (Ex. PW1/A) affirming all the requisite facts, in addition to producing the attesting witnesses to the Will, they being Pradeep Aggarwal (PW-2) and Manoj Kumar (PW-3), the latter two deposing on the strength of their respective affidavits (Ex. PW2/A and PW3/A respectively). There is no contest to the statements of any of the said witnesses.

11. From the unchallenged testimonies of PW-2 and PW-3, as indeed of PW-1, it stands proved that Mr. D.R. Gupta son of late Sh. Balwant Rai had executed the Will (Ex. PW1/2) on 24.07.2010 at New Delhi in the presence of the said two witnesses (PW-2 and PW-3) each signing in the presence of the other two persons, the document having been presented for registration and having been registered accordingly by the Sub Registrar-V, New Delhi, on the same date in the presence of said very witnesses. It is also proved by the unchallenged testimonies of the said witnesses that late Sh. D.R. Gupta at the time of signing and registration of the said Will was in sound state of physical and mental health and that he had executed the said Will declaring it to be his last Will and testament, out of his own free will and volition. It is noted that in the said Will, the testator had referred to similar documents having been earlier executed and registered by him on 16.06.1997, 31.07.2002 and 18.01.2006 but on account of change in the structure of his assets, he having decided to revoke all the said earlier Wills, the Will dated 24.07.2010 (Ex. PW1/2) was executed as his last Will and testament, there being no claim or proof of any Will subsequently executed by the testator prior to his death.

While setting out the manner in which the estate of Mr. D.R. Gupta was to devolve upon his legal heirs by the said Will (Ex. PW1/2), the petitioner was appointed as the executor.

12. In the above noted facts and circumstances, the petitioner has made out a case for grant of probate in his favour in respect of the above mentioned Will, he having been appointed as its executor, the prayer for grant of probate now having been restricted to the above mentioned three immovable properties.

13. Accordingly, the petition is allowed. Probate is granted in respect of the Will dated 24.07.2010 (Ex. PW1/2) executed by late Sh. D.R. Gupta son of late Sh. Balwant Rai in favour of the petitioner, in respect of the above mentioned immovable properties, subject to the requisite court fees/stamp duty being furnished in accord with the valuation reports and upon submission of the administration bond and surety, in accordance with law, to the satisfaction of the Registrar General of this court.

14. The petition stands disposed of in above terms.

15. The matter shall be listed before the Registrar General for payment of requisite court fee in respect of the above mentioned estate of the deceased and for acceptance of the administration bond and surety on 30.01.2017.