

(2015) 09 DEL CK 0123

In the Delhi High Court

Case No : Regular First Appeal (OS) 143 and 147 of 2014

Vinod Kumar Nijhawan and Others

APPELLANT

Vs

Kamla Nijhawan and Others

RESPONDENT

Date of Decision : 04-09-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 6
Succession Act, 1925 — Section 124

Citation : (2015) 10 AD 305

Hon'ble Judges : Pradeep Nandrajog, J; Mukta Gupta, J

Bench : Division Bench

Advocate : Manish Vashist and Sameer Vashist, for the Appellant; Ved Prakash Sharma, Amrit Kaur Oberoi, Pooja Yadav, Kanica Sabharwal, Kunal Dutt and Mayank Garg, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J—The contesting parties in the two appeals are : (i) Smt. Kamla Nijhawan, and (ii) her son Vinod Kumar Nijhawan. Ministry of Urban Development and Land and Development Officer are proforma parties because depending upon the result of the suit filed by Kamla Nijhawan would depend whether mutation in the relevant government records of the suit property has to be effected in her name. Counsel as above have appeared for the contesting parties in the two cross appeals which lay a challenge to a common judgment and decree dated September 03, 2014. The decree has been passed by the learned Single Judge disposing of IA No. 2166/2014 invoking Order XII Rule 6 of the Code of Civil Procedure by Kamla Nijhawan.

2. Balwant Rai Nijhawan and his wife Kamla Nijhawan (the plaintiff of CS (OS) No. 3048/2011) were happily married and were blessed with two sons named Vinod Kumar Nijhawan and Anil Kumar Nijhawan.

3. Inheriting the suit property comprising the ground floor constructed on a plot of land bearing Municipal No. 13/27, West Patel Nagar, New Delhi, from his father

Dinanath Nijhawan as per a will dated September 25, 1989, Balwant Rai Nijhawan executed a will on August 22, 1995 in which he duly recorded that he inherited the ground floor of property bearing Municipal No. 13/27, West Patel Nagar from his father and the rest were his self acquired properties.

4. It needs to be noted at this stage that as per the will dated September 25, 1989 executed by Dinanath Nijhawan under which he bequeathed the ground floor of property bearing Municipal No. 13/27, West Patel Nagar to his son Balwant Rai Nijhawan, he bequeathed the first and the second floor thereof to his grandson Anil Kumar Nijhawan i.e. the son of Balwant Rai Nijhawan and Kamla Nijhawan.

5. Will dated August 22, 1995 is admitted by all as the last legal and valid testament executed by Late Sh. Balwant Rai Nijhawan who died on December 31, 1999.

6. The dispute between Kamla Nijhawan and her son Vinod Kumar Nijhawan is to the interpretation of the will, which as per the learned Single Judge has been interpreted to conferring a right of residence in the suit property in favour of Kamla Nijhawan till she lives. The ownership has been held to be that of Vinod Nijhawan with right of possession postponed till his mother is alive; and so interpreting the will suit for possession has been decreed as prayed for by the mother. The decree is against Vinod Kumar and his son Sushil. The suit continues to determine the mesne profits.

7. Kamla Nijhawan is aggrieved by the impugned order/decreed dated September 03, 2014 in so far her claim of being the owner of the suit property has not been accepted. Vinod Nijhawan is aggrieved by the impugned order in so far decree for possession has been passed against him and the suit continues to determine the mesne profits.

8. The learned Single Judge has, after noting such parts of the will dated August 22, 1995 as he thought were relevant, proceeded to note the law declared in the decisions reported as Radha Sundar Dutta Vs. Mohd. Jahadur Rahim and Others, AIR 1959 SC 24 : (1959) 1 SCR 1309 , Ramkishore Lal Vs. Kamal Narain, AIR 1963 SC 890 : (1963) 2 SCR 417 Supp , Navneet Lal alias Rangji Vs. Gokul and Others, AIR 1976 SC 794 : (1976) 1 SCC 630 : (1976) 2 SCR 924 , Thayyullathil Kunhikannan and Others Vs. Thayyullathil Kalliani and Others, AIR 1990 Ker 226 , Kamla Devi Vs. Prabhawatti Devi (Smt) and Others, (2001) 3 JT 446 : (2001) 10 SCC 602 , Mauleshwar Mani and Others Vs. Jagdish Prasad and Others, AIR 2002 SC 727 : (2002) 1 JT 450 : (2002) 1 SCALE 303 : (2002) 2 SCC 468 : (2002) 1 SCR 423 : (2002) AIRSCW 358 : (2002) 1 Supreme 238 . and Arunkumar and Another vs. Shriniwas and Others, AIR 2003 2528 (SC) and has held that law declared in the decisions is that all clauses of a will have to be read together for a harmonious construction thereof. It has been held that the will in question has bequeathed the suit property to the son with right of enjoyment postponed till the wife of the testator was alive.

9. Before proceeding to note the contentions advanced in the two appeals by learned counsel for the parties, we must express our displeasure at the fact that notwithstanding in the pleadings of Sushil Kumar Nijhawan who is the son of Vinod Kumar Nijhawan, both of whom were impleaded as defendants No. 1 and 2 respectively in the suit instituted by Kamla Nijhawan they did not dispute the assertion made in the plaint by Kamla Nijhawan that her late husband had executed a will on August 22, 1995; and the only point of disagreement was, whereas Kamla Nijhawan claim absolute right in the suit property in her favour, Sushil Kumar and Vinod Kumar pleaded that she only had a life interest therein, issues got settled on September 27, 2012, and that too 11 in number including a will dated April 05, 1965 as also a will dated September 25, 1989 executed by Dinanath Nijhawan. We wonder what was the counsel assistance given and what application of mind went when the issues were settled. The result was useless evidence led concerning the issues settled, without anybody realizing that neither party being at variance that Balwant Rai Nijhawan had inherited the ground floor of property bearing Municipal No. 13/27, West Patel Nagar under a will dated September 25, 1989 executed by his father, the only dispute was to the interpretation of the will executed by Balwant Rai Nijhawan. The issue arose with respect to Kamla Nijhawan's claim that she was the absolute owner of the property as per the will and the defence was that she had a life interest therein. The suit for possession ought to have been decreed straightaway because even if the defence set up by defendants No. 1 and 2 succeeded, Kamla Nijhawan would be entitled to possession of the suit property because as per defendants No. 1 and 2 she had an exclusive interest therein during her lifetime. Ultimately the issue has been decided by the learned Single Judge ignoring the useless evidence which was led and premised upon the interpretation of the will in question.

10. It is trite that while construing a will the Court is entitled to put itself into the testator's armchair. The true intention of the testator has to be gathered, not by attaching importance to isolated expressions in a will, but by reading the will as a whole with all its provisions and ignoring none as redundant or contradictory. While sitting in the armchair of the testator the Court has to look at all the circumstances under which the testator made the will, such as the state of his property and of his family and the like.

11. The will dated August 22, 1995 proceeds to note that the testator was in his senses and in perfect health and understood the affairs of the world. It then proceeds to record that the testator became the owner of ground floor of property bearing Municipal No. 13/27, West Patel Nagar under a will executed by his father. The will then records that besides his wife Kamla, the testator has two sons named Vinod Kumar and Anil Kumar. The will then proceeds to distribute the estate by recording that the estate of the deceased was as per Schedule A. All properties in Schedule A except at Item No. 5 i.e. Ground Floor of House No. 13/27, West Patel Nagar have been bequeathed to Vinod Kumar; and we note that the properties are four in number : (i) a plot of land in Sector 20, Phase I,

Trilok Vihar, (ii) a plot of land in Gurgaon, (iii) 33 Ormely Road, London and (iv) a flat in Noida. Property at Serial No. 6 of Schedule A comprising moveable assets have been bequeathed to Vinod Kumar and Anil Kumar in the manner described. The language of the bequest concerning the five immovable properties may be noted. It reads as under:-

"After fully considering the pros and cons of the whole matter and realizing that death is the law of nature and one has to give up his mortal coil sooner or later and with a view to avoid any further dispute and unwanted any misunderstanding in the family, I am making this Will as under:-

(A) I have got one industrial property mentioned at item No. 1 of the Schedule (A). This property plot including construction was exclusively done by me and I have already bequeathed No. I/22, Phase I, Sector-20, Udyog Vihar (Dunda Hira) District Gurgaon, Haryana State, to my eldest son Vinod Kumar Nijhawan.

(B) Regarding property at Item No. 2 of the Schedule "A" the same is bequeath and devise in favour of my eldest son Vinod Kumar Nijhawan. The property has already been registered in his name.

(C) Regarding property at Item No. 3 of the Schedule "A" I hereby devise and bequeath in favour of my younger son Anil Kumar Nijhawan, who is living in States. If this property being 33 Ormely Road, S.W. 12 London is sold during my lifetime then in that case, the proceeds of the sale price will go to Anil Kumar Nijhawan my youngest son.

(D) Regarding house at Noida at item No. 4 of the Schedule "A" which was exclusively purchased by me, I bequeath in favour of my eldest son Vinod Kumar Nijhawan. This property has also been got registered in his name.

(E) Regarding house being 13/27, West Patel Nagar (ground floor) at Item No. 5 of Schedule "A" which was handed over to me by my father Late Shri Dina Nath through Will I bequeath in favour of Vinod Kumar Nijhawan. This ground floor consists of four rooms, kitchen, store, bathroom & latrine as well as open ground at the back and front with a verandah. My son Vinod Kumar Nijhawan shall be the owner of my interest in the aforesaid property.

Regarding moveable property at Item No. 6 of the Schedule "A" whose description in detail is appended with Schedule "A" shall got to my two sons separately in the manner as follows:-

I do hereby bequeath and devise the total amount in Indian rupees Sterling BOB as well as NRE in Indian rupees lying in different banks in India amount approximately Rs. 45,88,66/- to my eldest son Vinod Kumar Nijhawan vide list of amount annexed with the schedule "A". I also do hereby bequeath and devise the amount lying in sterling in India in various banks totaling ? 72,000/- to my youngest son Anil Kumar Nijhawan and further to that have also Sterling lying in London in different banks and building societies and post office including shares whose detail is given and annexed with schedule "A" will also bequeath to my

youngest son Anil Kumar Nijhawan. As per jewellery mentioned in schedule "A" under the heading moveable properties shall be the subject matter of this Will which shall be equally divided between my two sons Vinod Kumar Nijhawan and Anil Kumar Nijhawan which at present lying in lockers in Punjab National Bank, Karol Bagh, Gurdwara Road, New Delhi and P.N.B. W.P.N. Market."

12. After recording the terms of the bequest as aforementioned, the testator has mentioned as under:-

"I need mention here that to avoid any misunderstanding between the two sons, the properties which were already sold in India as mentioned in Schedule "A" by my eldest son Vinod Kumar Nijhawan have been kept in consideration and therefore the property being 33, Ormeley Road, London shall exclusively go to my younger son Anil Kumar Nijhawan to equalize the assets."

13. The problem has been created inasmuch immediately after the bequest as reproduced hereinabove, the testator has recorded:-

"Regarding moveable property at item No. 5 of the Schedule "A" the same is bequeathed and demised in favour of my wife, Mrs. Kamla Nijhawan, who shall be the owner thereof after my death."

14. Thereafter the will terminates by a clarification written in the will as under:-

"I want to make it further clear that I shall remain full-fledged owner of all my properties moveable and immovable during my lifetime and after me if my wife Mrs. Kamla Nijhawan survives, she will be the owner of all my entire estate both moveable and immovable and this will shall have effect after her death."

15. The principal bone of contention between the mother and the son is : whether the bequest in favour of the two sons of the deceased i.e. Vinod Kumar and Anil Kumar is a contingent bequest and therefore Section 124 of the Indian Succession Act, 1925 is attracted.

16. Section 124 of the Indian Succession Act, 1925 reads as under:-

"124. Bequest contingent upon specified uncertain event, no time being mentioned for its occurrence -

Where a legacy is given if a specified uncertain event shall happen and no time is mentioned in the will for the occurrence of that event, the legacy cannot take effect, unless such event happen before the period when the fund bequeathed is payable or distributable."

17. Kamla Nijhawan interprets the will as a conditional bequest in favour of her sons because she urges that her death contemplated by the will was a specified uncertain event. She argues that the fund bequeathed became payable or distributable when her husband Balwant Rai Nijhawan died on December 31, 1999. She urges that since she was alive, the bequest in favour of her sons cannot take effect. She relies upon the recording in the will : "Regarding

moveable property at item No. 5 of the Schedule A the same is bequeathed and demised in favour of my wife, Mrs. Kamla Nijhawan, who shall be the owner thereof after my death" to urge that the same unequivocally shows that property at serial No. 5 of Schedule A i.e. the ground floor of property bearing Municipal No. 13/27, West Patel Nagar, New Delhi has been bequeathed to her. She further relies upon the last paragraph of the will wherein it is recorded : "I want to make it further clear that I shall remain full-fledged owner of all my properties moveable and immovable during my lifetime and after me if my wife Mrs. Kamla Nijhawan survives, she will be the owner of all my entire estate both moveable and immovable and this will shall have effect after her death" to urge that as per said part of the will it is clear that the bequest in favour of the sons was contemplated if she had died during the lifetime of her husband and that if she live beyond the life of her husband, the bequest would be to her in full.

18. The learned Single Judge has negated the stand of Kamla Nijhawan by reasoning in paragraph 27 of the impugned decision as under:-

"27. It is well settled that whenever there are contradictions in a Will, then all the clauses of the Will have to be read together to give harmonious construction. Of course, in the Will it has not been specifically stated that the Plaintiff will have only a life estate, yet making first bequest in favour of the two sons in respect of different properties and then making bequest of all the immovable properties in favour of the wife and then stating the Will shall have effect after her death clearly indicates that the Will had given a vested right in favour of the Defendant No. 2 in respect of the suit property on the death of the testator. This was not a contingent right. It was nowhere stated if anything is left from the bequest, that will go to the beneficiaries on the death of the Plaintiff Smt. Kamla Nijhawan as was the case in Kamla Devi (supra)."

19. Thereafter the learned Single Judge has noted the language of the will which was considered by the Supreme Court in Naveet Lal's case (supra) and Arun Kumar's case (supra) to highlight that somewhat similarly worded will in Navneet Lal's case (supra) was construed as conferring a life interest in favour of the wife and the ratio of the other decision compelled the learned Single Judge to ascertain the intention of the testator by relying upon the five principles enunciated by the Supreme Court in Navneet Lal's case and reaffirm in Arun Kumar's case.

20. Since the language of the will in question with which we are concerned is not *pari-materia* with the language of any of the wills which were the subject matter of consideration in the various judgments noted by the learned Single Judge and which were relied upon before us in the appeal as well, it would be useless for us to note the language of the said wills and what was the issue which arose concerning the wills. It would be sufficient for us to note that the five cardinal principles to construe a will are the ones set out in paragraph 8 of the decision in Navneet Lal's case and the same are as under:-

"(i) The fundamental rule is to ascertain the intention of the testator from the words used, the surrounding circumstances for the purpose of finding out the intended meaning of the words which have been employed;

(ii) The court, in doing so is entitled to put itself into the armchair of the testator and is bound to bear in mind also other matters than merely the words used and the probability that the testator had/would have used the words in a particular sense, in order to arrive at a right construction of the will and ascertain the meaning of the language used;

(iii) The true intention of the testator has to be gathered not by attaching importance to isolated expressions but by reading the will as a whole, with all its provisions and ignoring none of them, as redundant or contradictory, giving such construction as would give to every expression some effect rather than that which would render any of the expressions inoperative;

(iv) Where apparently conflicting dispositions can be reconciled by giving full effect to every word used in a document, such a construction should be accepted instead of a construction which would have the effect of cutting down the clear meaning of the words used by the testator;"

(v) It is one of the cardinal principles of construction of wills that to the extent that it is legally possible effect should be given to every disposition contained in the will, unless the law prevents effect being given to it. If even there appear to be two repugnant provisions conferring successive interest and the first interest created is valid the subsequent interest cannot take effect, the court will proceed to the farthest extent to avoid repugnancy, so that effect could be given as far as possible, to every testamentary intention contained in the will."

21. Let us re-visit the will and read it holistically and not pedantically. After recording that the testator inherited the ground floor of Property No. 13/27, West Patel Nagar from his father the testator records that other properties mentioned in Schedule A to the will were acquired by him and he was capable to dispose them of. He thereafter notes that he has a wife and two sons and expresses a desire (which unfortunately has been not honoured) that he wants to avoid any dispute and misunderstanding in the family. He then records that he has one industrial property in Udyog Vihar, Gurgaon and he bequeaths the same to his son Vinod Kumar. He then records that the property at serial No. 2 of Schedule A is bequeathed to Vinod Kumar. He then records that property at serial No. 3 of Schedule A is bequeathed by him to his son Anil Kumar. He then records that the house at Noida at serial No. 4 of Schedule A was bequeathed by him to Vinod Kumar. He then records that the ground floor of House No. 13/27, West Patel Nagar, listed at serial No. 5 of Schedule A which he inherited under a will from his father is bequeathed by him to his son Vinod Kumar. He then proceeds to refer to the movable properties at item No. 6 of Schedule A and makes a bequest concerning them between his two sons.

22. He then records something of importance. The property at serial No. 2 of

Schedule A was a plot of land in Gurgaon which had already been sold of because it was in the name of his son Vinod Kumar but the testator had financed the same. He therefore records in the will : "I need mention here that to avoid any misunderstanding between the two sons, the properties which were already sold in India as mentioned in Schedule A by my eldest son Vinod Kumar Nijhawan have been kept in consideration and therefore the property being 33, Ormeley Road, London shall exclusively go to my younger son Anil Kumar Nijhawan to equalize the assets". The reason is that the said property had already been sold of in the year 1985. The recording by the testator that he had made a mention thereof in his will notwithstanding it being sold of to reveal his intention of equalizing the assets between his two sons shows that the intention of the testator was to bequeath his estate between his two sons. He has made a positive bequest in unequivocal language of his estate in favour of his sons followed by recording of a recital that one of the property has already been sold of and money utilized by his son Vinod Kumar and yet he was making a mention thereof in the will because he wanted to expressly record that he had kept in his mind the object to equalize his inheritance between his two sons.

23. As it happens in life, the best falter. Documents scribed with the best of intentions suffer from use of imperfect language to convey the thought. This has happened in the instant case when after making a bequest of his estate between his two sons and expressly recording that his intention was to equally distribute his assets between his two sons, the testator records in the will that property at serial No. 5 of Schedule A is bequeathed and demised by him in favour of his wife Kamla Nijhawan, who as per the will would be the owner thereof after his death. He also records that till he is alive he shall be the owner of his property and after him, if his wife Kamla Nijhawan survives, she would be the owner of his entire estate; but he terminates the sentence and the paragraph by recording that "this will shall have effect after her death".

24. From the facts that the testator has firstly made a unequivocal bequest of his properties in favour of his sons, secondly has recorded that his intention was to ensure that his assets were equally inherited by his sons and lastly by recording that if his wife survives him the will shall have effect after her death makes it absolutely clear that the intention of the testator was that his wife should have a right equivalent to a life estate in the ground floor of property No. 13/27, West Patel Nagar and the bequest would be in favour of his son Vinod Kumar. It is clearly not a case where the bequest is contingent as urged by learned counsel for Kamla Nijhawan.

25. The appeal filed by Kamla Nijhawan is liable to be dismissed.

26. Learned counsel for Vinod Kumar had stated at the bar when both appeals were heard that in view of the interpretation put by the appellants to the will dated August 22, 1995 it has to be conceded that during her lifetime Kamla Nijhawan would be entitled to the beneficial use of the ground floor of property bearing Municipal No. 13/27, West Patel Nagar. The only argument advanced was

that if Kamla Nijhawan wanted to rent out the ground floor it should be recorded that she would give first option to her son Vinod Kumar, an offer which was not accepted by Kamla Nijhawan. Thus, since this Court cannot direct Kamla Nijhawan to use during her lifetime the suit property, appeal filed by Vinod Kumar and his son is liable to be dismissed.

27. RFA (OS) No. 143/2014 and RFA (OS) No. 147/2014 are accordingly dismissed but without any order as to costs.