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IN THE HIGH COURT OF DELHI

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FAO.No.212/2004

Ramesh Chand Sachdeva Petitioner
through: Mr.M.P.Gupta, friend of appellant.

VERSUS

Lovleen Respondent
through: Mr.G.D.Chopra, Advocate

% DATE OF DECISION
17.03.2008

CORAM:

Hon'ble Mr.Justice Pradeep Nandrajog

1. Whether reporters of local papers may be allowed to see the judgment? Y
2. To be referred to the Reporter or not? Y
3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.**(Oral)

1. On 14.3.2008 in presence of the appellant and noting that his counsel was stated to be not available, matter was re-notified for today clearly informing the appellant that no further adjournment would be granted. One M.P.Gupta who claims to be a friend of the appellant Ramesh Chand Sachdeva is present in Court and states that Ramesh Chand Sachdeva has told him to inform the Court that his counsel Mr.O.P.Verma, Advocate is not available today.

2. I am not inclined to adjourn the matter for the reason appellant has managed to have the Trial Court record summoned in this Court and has not shown any keenness thereafter to argue the matter. I note that the respondent Ms.Lovleen is a widow.

3. According to Ms.Lovleen, late Mr.Bishamber Dass was blessed with 3 sons namely Ramesh Chand Sachdeva, Ved Prakash Sachdeva and K.K.Sachdeva. Unfortunately for him, his son K.K.Sachdeva had pre-deceased him. Lovleen is the wife of K.K.Sachdeva. Lovleen predicated a Will dated 26.2.1986 purportedly executed by her father-in-law. She succeeded in establishing the Will which I note vis-a-vis execution thereof was not really a matter of dispute between the parties. The Will in question, a registered document proved as Ex.PW-1/1 shows the concern of the grandfather towards his grandchildren i.e. sons of late K.K.Sachdeva.

4. Probate sought by Mr.Lovleen was objected to by Ramesh Chand Sachdeva and none else. It has to be noted in the impugned order that the wife of the deceased consented to the grant of the probate.

5. The objector set up a will dated 21.11.1995. The said will was claimed to be attested by 2 witnesses namely Jitender Kumar Verma examined as RW-3 and one Mahesh

Kumar examined as RW-4.

6. RW-4, Mahesh Kumar who appeared as the witness of the objector on 17.12.2003 lost courage in the Court. Probably, he was overwhelmed by the authority of the Court. He was hesitating in answering the questions. He blurted out that he was actually Sanjay Aggarwal S/o Chandu Lal Aggarwal and he has impersonated by masquerading as Mahesh Kumar. A part of the cross-examination of RW-4 has been noted by the learned Trial Judge. I reproduce the same:-

“.....I do not have any proof of identity that I am Mahesh Kumar S/o Shri Rukmesh Kumar.

Question : Can you give the name of your wife?

(The demeanour of the witness is noted as he is taking too much of time in disclosing the name of his wife and the question has to be repeated.)

Answer : The name of my wife is Madhu.

(At this stage, it is submitted by the witness that if he is pardoned he may be permitted to tell the truth. He has submitted that he is not real Mahesh Kumar. He has stated that his real name is Sanjay Aggarwal S/o Shri Chandu Lal Aggarwal R/o WB-138, Ganesh Nagar, Gali No.7, Shahdara, Delhi.)”

7. The learned Trial Judge has thus held that there is a serious doubt cast on the due execution of the will dated 21.11.1995.

8. That apart, the objector i.e. the appellant had admitted receipt of a legal notice dated 26.9.1995 from his

father. The legal notice has been proved as Ex.PW-3/2. The legal notice has been sent under instructions of the testator wherein the testator has warned his son not to extend threats to him i.e. the testator, the testator's wife, the testator's widowed daughter-in-law and his 2 grandsons, the principal beneficiaries of the will dated 26.2.1986.

9. Considering the contemporaneous evidence and specially Ex.PW-3/2 which shows strained relations between the appellant and his father, additionally noting the impersonation of a stated attesting witness to the will propounded by the appellant the learned Trial Judge has held that the will propounded by the appellant is not duly proved.

10. Pertaining to the will dated 26.2.1986 Ex.PW-1/1 learned Trial Judge has noted that the objection was predicated on the alleged subsequent Will without actually challenging the due execution of the Will Ex.PW-1/1. It has additionally been noted that through the testimony of the witnesses the Will in question, Ex.PW-1/1, has been established.

11. For my purposes, suffice would it be to record that if on the given evidence the view taken by the learned Trial Judge is a plausible view, this Court would not re-appreciate the evidence to find the relative strength of the contra view vis-a-vis the view taken.

12. Even otherwise, on the given evidence the only view possible is that the Will propounded by the appellant is a fabricated Will.

13. The only view possible is that the Will propounded by Lovleen is the last valid and legal testament of the deceased.

14. The appeal is dismissed.

15. Costs shall follow.

16. TCR be returned forthwith.

March 17, 2008
d.k.bainsla

PRADEEP NANDRAJOG, J.