

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Test Case No.4 of 2005**

% **Date of Decision: 04.05.2009**

Smt.Savitri Devi Petitioner

Through Mr.Pradeep K. Bakshi and Mr.Rajat
Navet, Advocates

Versus

Shri Ashok Tiwari and Others Respondent

Through Nemo.

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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1. This is a petition under Sections 276 and 300 of the Indian Succession Act for grant of probate in respect of the Will dated 14.09.2001 of late Sh.Hirdaya Nand Tiwari. The petition is filed by Smt. Savitri Devi wife of the late Sh.Hirdaya Nand Tiwari. The petitioner has asserted that Sh.Hirdaya Nand Tiwari had died at Delhi on 18.09.2001 and he was a permanent resident of E-4/6, Vasant Vihar, New Delhi.

2. The deceased is alleged to be survived by his wife, petitioner; son, Sh.Ashok Tiwari, respondent No.1; daughter-in-law, Smt.Amita Tiwari, respondent No.2; grand-daughter, Ms.Divya Tiwari, respondent No.3 and grand-son, Master Jitender Tiwari, respondent No.4 and daughter Smt.Ram Laxmi Mishra, respondent No.5. The petitioner has filed the copy of the death certificate and the list of relatives along with the petition.

3. The petitioner has also filed the valuation of the moveable and immovable assets of the deceased which is Rs.2,31,65,000/- and the debts of the deceased being Rs.5,07,500/-.

4. The immoveable property of the deceased comprises of agricultural land, 14 acres (16 bighas) at Village Deodheia, Post-Parasgarh, District Saran (Bihar) valued at Rs.75,00,000/-. However, it was reported to be valued at Rs.1,20,42,720/- by the concerned District Collector by his report dated 19.01.2009 bearing reference No.1804/Legal.

5. The petition is not contested by the legal heirs of late Sh.Hirdaya Nand Tiwari, who has filed their no objection to grant of Probate in respect of Will of the deceased.

6. In support of the contention of the petitioner that late Sh.Hirdaya Nand Tiwari had executed a legal and valid Will dated 14.09.2001, the deposition on affidavit of the petitioner and the attesting witness Sh.V.K.Tripathi has been filed. Sh.V.K.Tripathi has categorically deposed that the deceased late Sh.Hirdaya Nand had put his signatures on the Will in his presence and in the presence of the other witness Sh.Shakti Kumar Chauhan. He has also deposed that at the time of signing, the deceased was fully fit and was having full knowledge and understanding of the contents of the Will. He has also identified the signatures of late Sh.Hirdaya Nand Tiwari on the Will and also of the other attesting witness Sh.Shakti Kumar Chauhan. The deposition of the attesting witness on affidavit was exhibited as Ex.PW2/A and the Will has been exhibited as Ex.PW1/1. The deposition of the petitioner Smt.Savitri Devi, widow of late Sh.Hirdaya Nand Tiwari was also tendered and was exhibited as Ex.PW1/A.

7. The son and other relatives of the deceased have not filed any objection nor are there any other documents on record to dispute the veracity of the Will and the averments made by the petitioner for grant of probate for the last will of the deceased.

8. From the perusal of the evidence produced of the petitioner and attesting witness, it is inevitable to infer that the deceased, late Shri Hirdaya Nand Tiwari, was of a sound disposing mind on 14th September, 2001 when he executed the Will. It has been established that the deceased testator had signed the Will, Exhibit PW-1/1, which was attested by the attesting witnesses.

9. In *R. Venkatachala Iyengar v. B.N. Thimmajamma and Others*, (1959) Supp. 1 SCR 426, the Supreme Court has laid down the following propositions bearing on the nature and standard of evidence required to prove a Will:

1. Stated generally, a Will has to be proved like any other document, the test to be applied being the usual test of the satisfaction of the prudent mind in such matters. As in the case of proof of other documents, so in the case of proof of Wills, one cannot insist on proof with mathematical certainty.

2. Since Section 63 of the Succession Act requires a Will to be attested, it cannot be used as evidence until, as required by Section 63 of the Evidence Act, one attesting witness at least 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.

3. Unlike other documents, the Will speaks from the death of the testator, and therefore, the maker of the Will is

never available for deposing as to the circumstances in which the Will came to be executed. This aspect introduces an element of solemnity in the decision of the question whether the document propounded is proved to be the last Will and testament of the testator. Normally, the onus which lies on the propounder can be taken to be discharged on proof of the essential facts which go into the making of the Will.

4. Cases in which the execution of the Will is surrounded by suspicious circumstances stand on a different footing. A shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the Will under which he receives a substantial benefit and such other circumstances raise suspicion about the execution of the Will. That suspicion cannot be removed by the mere assertion of the propounder that the Will bears the signature of the testator or that the testator was in a sound and disposing state of mind and memory at that time when the Will was made, or that those like the wife and children of the testator who would normally receive their due share in his estate were disinherited because the testator might have had his own reasons for excluding them. The presence of suspicious circumstances makes the initial onus heavier and therefore, in cases where the circumstances attendant upon the execution of the Will excite the suspicion of the Court, the propounder must remove all legitimate suspicions before the document can be accepted as the last Will of the testator.

5. It is in connection with Wills, the execution of which is surrounded by suspicious circumstance that the test of satisfaction of the judicial conscience has been evolved. That test emphasize that in determining the question as to whether an instrument produced before the Court is the last Will of the testator, the Court is called upon to decide a solemn question and by reason of suspicious

circumstances the Court has to be satisfied fully that the Will has been validly executed by the testator.

6. If a caveater alleges fraud, undue influence, coercion etc. in regard to the execution of the Will, such pleas have to be proved by him, but even in the absence of such pleas, the very circumstances surrounding the execution of the Will may raise a doubt as to whether the testator was acting of his own free Will. And then it is a part of the initial onus of the propounder to remove all reasonable doubts in the matter.

10. Considering the facts and circumstances and the evidence led by the petitioner, it is apparent that the testator was of sound disposing mind at the time of execution of his last testament. There are no suspicious circumstances regarding the last testament of the deceased testator. All the yardsticks and test laid down by the Apex Court in *R. Venkatachala Iyengar (supra)* are fulfilled. There are no suspicious circumstances and this Court is satisfied that the will dated 14th September, 2001 is the last will of Late Shri Hirdya Nand Tiwari.

11. Consequently the petitioner has been able to prove that the deceased late Shri Hirdya Nand Tiwari executed his last will dated 14th September, 2001, 2005 and consequently the probate for the will of Late Shri Hirdyanand Tiwari dated 14th September, 2001 is granted to the petitioner as the executor of the will under Section 276 read with

Section 289 of the Indian Succession Act. Probate be issued to the petitioner in respect of his properties detailed in the Annexure annexed with the petition in the Form set forth in Schedule VI of the Indian Succession Act subject to petitioner furnishing requisite Court-fees and necessary Bond with one surety. Accordingly, the petition is disposed of.

MAY 04, 2009
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ANIL KUMAR, J.