

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

TEST. CAS. No.56/2007

Date of Decision: April 02, 2009

SHRI NARINDER SINGH & ORS Petitioners
Through Ms. Shalini Kapoor, Advocate

VERSUS

STATE Respondent
Through Mr. Virendra Singh, Advocate

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TEST. CAS. No.64/2007

Date of Decision: April 02, 2009

SHRI NARINDER SINGH & ORS Petitioners
Through Ms. Shalini Kapoor, Advocate

VERSUS

STATE Respondent
Through Mr. Virendra Singh, Advocate

CORAM:
HON'BLE MISS JUSTICE REKHA SHARMA

1. Whether the reporters of local papers may be allowed to see the judgment? No
2. To be referred to the reporter or not? No
3. Whether the judgment should be reported in the 'Digest'? No

REKHA SHARMA, J.

These are two petitions under Section 278 of the Indian Succession Act, 1956; one seeking Letters of Administration in respect of two `Wills' of late S. Sant Singh Dhingra dated April 30, 1993 and

March 28, 2001. The other is in respect of assets left behind by late Smt. Kaushalaya Kaur wife of S. Sant Singh Dhingra who died intestate. The relevant facts are as under:-

S. Sant Singh Dhingra was a permanent resident of E-26/5, Rajouri Garden, New Delhi. He breathed his last on March 23, 2004 leaving behind his wife Smt. Kaushalaya Kaur, three sons, namely, Narender Singh, Kuldeep Singh & Gurvinder Singh, two daughters, Smt. Amarjeet Kaur & Smt. Jatinder Kaur besides three grand-sons, namely, Ranjeet Singh, Mandeep Singh & Harneet Singh. Before his death he executed a `Will' dated April 30, 1993 in respect of the following properties of which he was the owner:-

- 1) Property No.E-26/5, Rajouri Garden, New Delhi, consisting Ground Floor, First Floor & Second Floor.
- 2) Share in Firm M/s Narender Rimal House, 5685, Gandhi Market, Sadar Bazar, Delhi.
- 3) Share in Factory and Building No.5, Sector A-4, Noida (UP).
- 4) Shares, Debentures, Bank Balances, Deposits, Debit-Credit balances with the parties, Cash, Jewellery and other house-hold goods.

By virtue of the aforesaid `Will', he bequeathed property No. E-26/5, Rajouri Garden, in favour of his three sons and three grand-sons, in the manner indicted in the `Will' and the remaining properties he bequeathed to his wife. The daughters were not given any share.

On March 28, 2001 he executed another `Will'. As per that `Will', he was the sole and absolute owner of three-storey built-up Property No.T-412, measuring about 50 Sq. Yards, situated at Ahata Kidara, Delhi. He bequeathed the said property entirely in favour of his son Gurvinder Singh Dhingra, and he did so for the reason as stated in

the `Will' that in his earlier `Will' dated April 30, 1993 he had given to his said son only life interest in respect of the portion of Property No. E-26/5, Rajouri Garden, New Delhi whereas to his other sons and grand-sons, he had given full ownership rights.

It so happened that on October 30,2005 Smt. Kaushalaya Kaur wife of S. Sant Singh also breathed her last. She died intestate. Hence, all the assets left behind by her were to devolve upon all her legal heirs, i.e, her three sons and two daughters.

The petitioners in probate case No. 56/2007 which is in respect of the two `Wills' of late S Sant Singh Dhingra are his sons, daughters and three grandsons. The other petition (Probate Case No. 64/2007) which is in respect of the assets of Smt. Kaushalaya Kaur has also been filed by the same petitioners as in Probate Case No. 56/2007 except the grandsons.

Notices of both the petitions were issued to the State and also to the public at large. Notices were also sent to the concerned Sub-Divisional Magistrates for valuation of the property bearing No.E-26/5, Rajouri Garden, New Delhi and the property bearing No.T-412 situated at Ahata Kidara, Delhi. Insofar as the share of the deceased S. Sant Singh Dhingra in factory and building No.5, Sector A-4, Noida (UP) as mentioned in the `Will' dated April 30, 1993 is concerned, it was stated by the petitioners that they were not seeking any probate in respect thereto and as such leaving aside this property, valuation report was called for in respect of all other properties. The valuation reports were received, but no objections to the two `Wills' were filed by the State or by any other person.

In the petition concerning Letters of Administration in respect of assets of Smt. Kaushalaya Kaur, the petitioners had filed an application for directions to the Managers of the Banks, where accounts of the deceased were located to allow them to operate the locker and prepare the inventory of the articles lying therein. On the application so made, a Court Commissioner was appointed to visit the Banks and prepare the inventory with regard to the articles lying in the lockers which he did and filed his report dated March 25, 2008.

In support of the averments made in the two petitions, affidavits by way of evidence were filed by two sons of late S. Sant Singh Dhingra, namely, Narinder Singh and Kuldeep Singh, his daughter, Smt. Amarjeet Kaur as also by his son-in-law, namely, Tirath Singh who was one of the attesting witnesses to the two `Wills`. In their respective affidavits, they affirmed on oath the contents of the two `Wills` as well as the contents of both the petitions including the assets left behind by their mother Smt.Kaushalaya Kaur. Three of them, namely, Narinder Singh, Tirath Singh and Kuldeep Singh also entered the witness-box as PW.1, PW.2 & PW.3 respectively. They tendered their affidavits in evidence as Ex.PW1/B, Ex.PW2/B and Ex.PW3/B respectively. They also relied upon death certificate of S. Sant Singh Dhingra which was proved as Ex.PW1/1.

Shri Tirath Singh in his affidavit Ex.PW2/B besides reiterating the contents of the petitions also stated that S. Sant Singh Dhingra executed the `Will` dated April 30, 1993 and Will dated March 28, 2001 in his presence and in the presence of Shri Shailesh Gupta and also signed as well as thumb-marked the two `Wills`. He further stated that thereafter both he and Shailesh Gupta signed as attesting witnesses to

the two `Wills' in the presence of S. Sant Singh Dhingra. He also stated that S. Sant Singh Dhingra was in sound disposing mind at the time of execution of the `Wills'. The said witness upon entering the witness-box proved the two Wills as Ex.PW2/1 & Ex.PW2/2 respectively.

Shri Narinder Singh besides filing his affidavits in the two petitions also proved the report of the Local Commissioner dated March 25, 2008 as Ex.PW1/2. The said report contains the details of the articles found in the lockers which were in the name of Smt. Kaushalaya Kaur.

Having regard to what has been noticed above, I find that the petitioners through their affidavits and through their oral testimonies as well as through the affidavit and oral testimony of Shri Tirath Singh have been able to prove that S. Sant Singh Dhingra expired on March 23, 2004 leaving behind two `Wills', dated April 30, 1993 and March 28, 2001 and that by virtue of both the `Wills' he had bequeathed two of his properties, i.e. property No.E-26/5, Rajouri Garden, New Delhi and property No.T-412, situated at Ahata Kidara, Delhi in favour of his sons and grand-sons, in the manner indicated in the `Wills'. They have also been able to prove through the testimony of Shri Tirath Singh who was an attesting witness to the two `Wills' that at the time of execution of the Will S.Sant Singh Dhingra was in a sound disposing mind. It also stands proved through the affidavits and oral testimonies of the witnesses that Smt. Kaushalaya Kaur died intestate on October 30, 2005 leaving behind the assets as mentioned in their petition, affidavits and as per the details given in the report of the Local Commissioner. I, therefore, accept the Wills dated April 30, 1993 (Ex.PW2/1) & March 28, 2001 (Ex.PW2/2) executed by late

S. Sant Singh Dhingra and as prayed in the petitions grant Letters of Administration in respect of `Will' dated April 30, 1993 to one of the petitioners, namely, Narinder Singh son of late S. Sant Singh Dhingra and Letters of Administration in respect of the `Will' dated March 28, 2001 to petitioner Gurvinder Singh son of late S. Sant Singh Dhingra. I also grant Letters of Administration in respect of the assets of Smt. Kaushalaya Kaur with respect to the contents of the lockers and the amount lying in the Saving Bank Accounts to petitioner Narinder Singh who shall divide the same among all the legal heirs of Smt. Kaushalaya Kaur. The petitioners shall pay the Court fees on the valuation of the properties and shall also file administration bonds and surety bonds.

Both the petitions are disposed of.

REKHA SHARMA, J.

April 02, 2009
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