

\* **HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: June 3<sup>rd</sup> , 2010

+ FAO-327-328/2005

Onkar Nath Bhaskar & anr ..... Appellants  
Through: Mr.S.S.Mishra & Mr.M.Padhi, Advs.

-versus-

S.S.Bakshi & anr ..... Respondents  
Through: Ms.Manju Oberoi, Adv.

**CORAM:-**  
**HON'BLE MS. JUSTICE VEENA BIRBAL**

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

**Veena Birbal, J.**

1. By way of present appeal, appellants have challenged the impugned order dated 21<sup>st</sup> September, 2005 passed by the District Judge, Delhi wherein their application under section 263 of the Indian Succession Act (hereinafter referred to as the Act) seeking revocation of Letter of Administration dated 17<sup>th</sup> November, 2002 and suspension of judgment dated 15<sup>th</sup> September, 2001 in favour of respondent no.1 has been rejected.

2. Briefly stated the facts relating to the present appeal are as under:-

Respondent no.1 herein i.e. petitioner before the learned District Judge had filed a petition under Section 264 of the Act for grant of probate with regard to 'Will' dated 11<sup>th</sup> October, 1974 executed by one

Hans Raj Bhaskar s/o Mela Ram who had died on 27<sup>th</sup> July, 1988. By virtue of the said 'Will', the above named testator had bequeathed property no.E-18, Greater Kailash Enclave Part I in favour of respondent no.1. Notice of the said petition was issued to the State through Collector, near relatives and copy of the same was also got affixed on the notice board of the court and citation was also published in the newspaper National Herald on 25<sup>th</sup> July, 2001 and Tribune dated 18<sup>th</sup> July, 2001 but none came forward to oppose the said petition. Thereafter evidence of the respondent no. 1 i.e. petitioner before the learned District Judge and supporting witnesses produced by him in support of his case was recorded. After going through the evidence and other material on record, learned District Judge vide order dated 15<sup>th</sup> September, 2001 held that 'Will' exhibit PW 2/1 was duly executed by the testator i.e. Hans Raj Bhaskar in sound disposing mind without any coercion or undue influence and it was his last 'Will'. Accordingly, respondent no. 1 was granted probate in respect of 'Will' Exhibit PW 2/1 with regard to property mentioned above subject to his furnishing valuation report, court fee and administration bonds. In the above probate petition, appellants herein are respondents 2 & 3.

3. On 30<sup>th</sup> September, 2002, appellants herein moved an application under section 263 of the Act for revocation of probate which was granted in terms of judgment dated 15<sup>th</sup> September, 2001 wherein it is alleged that appellants came to know about the grant of probate when respondent no.1 had filed written statement in Suit No.76/2002 titled as Anuj Goel Vs S.S.Bakshi & anr seeking declaration and consequential release of possession of property, which at the relevant time was pending in the court of Mr.D.K.Malhotra, learned Addl. District

Judge, Delhi.

It is alleged that respondent no.1 had obtained the probate by concealing material facts/document. There was no real intention of deceased to execute will (Ex.PW2/1). Appellants were not served with probate petition, as such probate granted in favour of respondents be revoked.

4. Respondent had opposed the revocation petition by contending that probate was rightly granted in favour of respondent. He contended that no ground for revocation was made out.

5. On the pleadings of the parties, the learned District Judge had framed the following issues:-

- “1. Whether the application for revocation is not maintainable? OPR
2. Whether there is any just cause for revoking grant of letters of admission?
3. Whether the petitioner is guilty of suppressing the true facts by not disclosing the alleged agreement to sell and other documents with the alleged ‘WILL’?
4. Whether the ‘Will’ in question is not a valid ‘Will’ and is a forged & fabricated document?
5. Relief.”

6. Thereafter, the matter was listed for evidence of the appellants but no evidence was led by them. After hearing arguments and considering the documents on record, the application of revocation was dismissed vide impugned order dated 21.09.2005. Aggrieved with the same the present appeal is filed.

7. I have heard learned counsel for the parties and perused the material on record.

8. It is contended that ‘Will’ which was got probated by respondent

no. 1 was not the document executed in isolation. Along with the said 'Will', series of documents were executed, namely, Agreement to Sell, Special Power of Attorney, Agreement for Construction of Building, etc. It is contended that none of these documents were filed at the time of grant of probate. It is contended that there was no real Animus Testandi on the part of the executants for executing the 'Will' as such it could not have been probated by the court. It is also contended that the appellants being the legal heirs were never served with the probate petition. Even the particulars of appellant no. 2 have not been there in the probate proceedings, as such illegal order is passed in favour of respondents by which probate has been granted. It is also contended that in the probate proceedings, one Mr. Anuj Goel was also a claimant of the property in respect of which 'Will' has been probated as such impugned order rejecting the revocation of the probate is not sustainable. It is contended that prior to filing of the probate petition, respondent no. 1 had filed a suit no. 12/1997 in the Civil Court against DDA seeking a mandatory injunction regarding subject property for conversion of same from leasehold to free hold. The DDA in the said suit had disclosed that Anuj Goel had asserted claim over the property. Therefore, he was a necessary party to the case. It is contended that learned District Judge, Delhi did not consider the contentions raised as well as the material on record and has passed an illegal order thereby rejecting the application for revocation of probate.

9. On the other hand, stand of the respondent is that other document as alleged by appellant were not filed as the same were not relevant for the grant of probate. It is further contended that appellant had the knowledge of probate proceedings. Notice of probate petition

was published in 'National Herald' as well as 'Daily Tribune' newspaper as per directions of learned District Judge, Delhi and applicant had knowledge of the probate petition and they had deliberately chosen not to contest the same. It is further contended that appellants were not a party to the Civil Suit titled Anuj Goel v. S.S. Bakshi as such they could not have come to know of grant of probate from the written statement of the said case as is alleged. It is contended that the impugned order dated 21<sup>st</sup> September, 2005 is legal and valid in all respect and does not call for any interference.

10. The contention of the appellants about non filing of other documents executed, at the time of grant of probate in favour of respondent is concerned, the learned District Judge has examined all these documents i.e. Agreement to Sell, etc., receipt wherein payment is received by cheque, another receipt regarding payment received by the father of the appellant in full and final settlement of the account, Power of Attorney, Agreement for Construction of Building, etc. The finding in this regard is as under:-

"Documents are agreement to sell in favour of S.S. Bakshi executed in March, 1974 whereby property in question was agreed to be sold. He executed a receipt of receiving a sum of Rs. 18,000/- as security deposit in terms of agreement for construction in respect of this property. There is another receipt of receiving Rs.1000/- by cheque. Then there is another receipt of Rs. 49,000/- about the payment received by Shri Hans Raj Bhaskar as full and final settlement of the account. He also executed special power of attorney in favour of Smt. Kulbir Kaur wife of S.S. Bakshi, to empower her to obtain permission to sell from the President of India and to assign/sub-lease rights in respect of the property. He executed an affidavit, affirming that he had not fully paid the amount/charge to the House Building Cooperative Society and if any charge were to be paid, they would be paid by S.S. Bakshi, the contractor with whom he had entered into an agreement of construction on the said plot under the terms of an agreement dated 11.10.1974. It was also affirmed in that affidavit that the possession of the aforesaid plot had been

handed over by him to Shri S.S. Bakshi for the construction thereon. He also executed an Indemnity bond and agreement of Building Contract in favour of S.S. Bakshi. All these documents along with the 'WILL' were executed on the same date. It is apparent that Shri Hans Raj Bhaskar knew what he was doing and after selling his property he had shifted to Chandigarh. I consider that the plea taken by the applicants that the non-applicant/petitioner should not be allowed to become owner of the said property on the basis of 'WILL' in question, is not tenable. In fact, the court of probate has not to determine and decide the question of title/ownership. Nor my learned predecessor while deciding the case for probate of the 'WILL' had decided the question of ownership. Under the application for grant of probate, the court before it grants probate or letters of administration in respect of the 'WILL', is required to satisfy itself as best as it can that the 'WILL' was validly executed and attested as per the provisions of the law. The probate court has no jurisdiction to determine the question of title with reference to any property comprised in the 'WILL'. The applicants/objectors herein seem to have a misconception that by granting probate in favour of the non applicant/petitioner this court had granted title to the petitioner.

As far as allegations & contentions of the applicants about fraud played by the petitioner upon the court are concerned, perusal of all the documents filed on record by the applicants as well as non applicant clearly show that Hans Raj Bhaskar had executed this 'WILL' deliberately in favour of the petitioner/non applicant, fully knowing the implications. The 'WILL' was got registered later on. The signatures of Mr. Bhaskar appearing on the 'WILL' and on other documents are comparable and are same. I find no reason to revoke the probate granted in favour of petitioner/non applicant."

11. The above finding is based on material on record. It is not the stand of the appellants that the above documents were not executed by their deceased father. There was no requirement of filing the other documents apart from 'Will' for the grant of probate. Respondent was under no obligation to file contemporaneous documents executed by the testator at the time of grant of probate of 'Will'. Learned counsel has failed to justify as to how withholding of other documents vitiates the order of grant of probate especially when these documents were not material for the grant of probate. By not filing these documents, it

cannot be said that any fraud is committed by the respondent as is alleged. I have gone through the judgment of S.P.Chengalvarya Naidu (dead) by L.Rs, appellant vs. Jagannath (dead) through L.Rs and ors, respondents AIR 1994 SC 853 relied upon by learned counsel for appellant. The same is not applicable to the facts and circumstances of the present case, as such, is of no help to appellant. Though specific issue was framed as to whether the 'Will' is not a valid 'Will' and is a forged and fabricated document but appellants have not led any evidence in this regard despite opportunity given. The finding given by the learned District Judge is based on material on record. Perusal of the order dated 15<sup>th</sup> September, 2001 by which probate has been granted shows that 'Will' Ex. PW 2/1 is proved by attesting witness Shri H.M.Anand (PW 2). Evidence of respondent was also recorded. Further, 'Will' is dated 11<sup>th</sup> October, 1974. Testator died on 27<sup>th</sup> July, 1988. His wife died in 1996. There is nothing on record to show that any objection was raised by the testator or his wife during their life time.

Execution of Will (Ex.PW2/1) along with other documents stated above shows deceased knew what he was doing.

In view of above discussion, the contention of the appellant that testator had no Animus Testandi to execute the Will has also no force. The same is also rejected.

12. Perusal of record shows that in the probate petition, appellant no.1 has been arrayed as respondent no.2. Appellant no.2 is the daughter of deceased. She has also been made respondent no.3. Even in the body of petition, there is mention of L.Rs of deceased. Perusal of trial court record shows that notice of probate petition is

issued to respondents/State through Collector. Publication of notice is also done in “Tribune” and “National Herald” Newspapers. Thus the appellants are deemed to have been served by way of publication. I have gone through the judgment relied upon by appellant titled Mani Bhai Amaidan Patel & ors Vs. Dayabhai A Maidan 2005 (12) SCC 154. The same is not applicable to the facts of the present case as in the said case in the application for grant of probate, appellant therein had stated “nobody” against the opposite party despite the fact that there were legal heirs of the deceased of the said case.

The `Will' Ex.PW2/1 is registered and has been probated in accordance with law. Appellants have failed to produce evidence challenging the genuineness of `Will' during the proceedings under section 263 of the Act wherein they had full opportunity. Further Shri Anuj Goel has not come forward to challenge the grant of probate as such respondent no. 1 was under no obligation to implead him as a party. Further matter of possession or title is not in issue.

In view of the above discussion, the contentions raised by appellants have no force. No illegality is seen in the impugned order dated 21.09.2005 which calls for any interference of this court. The same stands upheld and the present appeal stands rejected. There is no order as to costs.

**VEENA BIRBAL, J.**

June 3<sup>rd</sup>, 2010  
ssb/kks