

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Pronounced on: 20th April 2011

+ **TEST CAS. No. 22/2003**

C.K. SUCHARITA

.....Plaintiff

- versus -

STATE OF DELHI

.....Defendant

Advocates who appeared in this case:

For the Plaintiff: None

For the Defendant: None

CORAM:-

HON'BLE MR JUSTICE V.K. JAIN

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| 1. Whether 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 Digest? | No. |

V.K. JAIN, J (ORAL)

1. This is a petition for grant of probate of a Will alleged to have been executed by late Smt.P. Lakshmi Bhanu Rao on 21st August 2000. The petitioner is the executor of the Will, which is alleged to have been executed in the present of two witnesses namely Sh. P. Raj Kumar and Smt. Shashi Vashist. Under the Will, undivided half share of the testator in property No.32 (Old) and 38 (New),

Barraby, Kilpauk, Chennai 600010 was bequeathed to her nephews N. Sivram and N. Bhaskar, vacant plot of land of about two grounds comprised in R.S. No.3129/9 of Puraswalkam, Perambur Taluk was bequeathed in equal shares to Mrs. M. Uma Rao, niece of the deceased and Mr. N. Bhaskar. Flat No.71, DDA (SFS) Gautam Apartments, Gautam Nagar, New Delhi-110049 was bequeathed to Mr. P. Uma Maheshwar Rao, husband of the deceased, who was to have life interest therein and after his demise the flat was to devolve upon Mr. N. Sivram. All the investments such as mutual funds, UTI units, bonds, etc. were to go to the joint holder or the nominee as the case may be.

2. No objection letters to grant of probate were filed by N. Uma Roa, N. Sivram and N. Bhaskar.

3. The petitioner filed three affidavits by way of evidence. The first witness Mr. P. Rajkumar has stated that the Will dated 21st August 2000 was signed by Smt. P. Lakshmi Bhanu Rao in his presence and she was in a sound state of mind at the time of signing the Will. Same is the deposition of Smt. Shashi Vashisht, who is the other attesting witness to the Will. The third witness Smt. C.K. Sucharita is the petitioner in this case. She has stated that

late Smt. Lakshmi Bhanu Rao was a resident of 71, DDA SFS, Gautam Apartments, Gautam Nagar, New Delhi and she died issueless on 18th January 2001. She has further stated that her husband Dr. P. Uma Maheswara Rao also died during pendency of this petition on 30th November 2004. She has stated that the Will Ex.PW-1/3 was executed in her presence and in the presence of Mr. P. Rajkumar and Smt. Shashi Vashisht.

4. IA 14155/2008 was filed by the petitioner for impleadings legal representatives of Mr. P. Maheswara Rao, who died during pendency of this petition. However, notice of the application could not be issued to the proposed legal representatives for want of the process fee and no one is today present for the petitioner, even on the third call at 4:00 PM. The application is, therefore, dismissed in default. Order XXII Rule 6 of the Code of Civil Procedure, to the extent it is relevant, provides that whether the cause of action survives or not, there shall be no abetment by reason of the death of either party between conclusion of the hearing and the pronouncement of the judgment, but judgment may in such case be pronounced notwithstanding the death and shall have the same force and effect as if it

had been pronounced before the death took place. In fact Mr. P. Uma Maheswara Rao was not a party to the petition, since State is the only respondent impleaded in this petition. Even if he on account of his being a legal heir of Smt. P. Lakshmi Bhanu Rao is considered to be a party to this petition, since he died on 30th November 2004 after evidence had already been closed on 23rd April 2008, the petition does not abate on account of dismissal of IA 14155/2008.

5. A bare perusal of Section 63(c) of Indian Succession Act would show that a Will is required to be attested by two or more witnesses and each of them must have seen the Testator sign or affixing his mark to the Will or should have seen some other person signing the Will in the presence and under the directions of the Testator or should have received a personal acknowledgement from the Testator with respect to his signature or mark or signature of the another person who signs the Will in the presence and under the direction of the Testator and it is also necessary that each witness should sign the Will in the presence of the Testator. This, however, is not the requirement of law in India that both the attesting witnesses

should also sign in the presence of each other.

6. Section 68 of Evidence Act, to the extent, it is relevant, provides that if a document is required by law to be attested, it shall not be used as evidence until at least one attesting witness 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. Since the Will is a document required by law to be attested by at least two witnesses, the petitioner could have proved it by producing one of the attesting witnesses of the Will. In the case before this Court, the petitioner has examined both the attesting witnesses to the WILL and has thereby duly proved the document in terms of the requirement laid down in Section 68 of the Evidence Act.

7. There is no material on record to indicate that the testator was not in a sound state of mind while executing the Will. She died on 18th January 2003 whereas the Will is stated to have been executed on 21st August 2000. It has also come in the deposition of the attesting witness that she was in a sound state of mind while executing the Will. There are no suspicious circumstances surrounding

execution of the Will. The suspicious circumstances may be many such as (i) the signature of the Testator may be shaky and doubtful or different from his usual signatures; (ii) the mental condition of the Testator may be feeble and debilitated at the time of the execution of the Will; (iii) the disposition may be such as is found to be unnatural, improbable or unfair in the light of relevant circumstances, such as exclusion of natural heirs without any reason (iv) the propounder may take a prominent part in the execution of the Will; (v) the Will may not see the light of the day for long time; (vi) the Will may contain incorrect recital of essential facts. The deceased was issueless. One of the beneficiaries of the Will was her own husband, whereas the remaining two beneficiaries were her own relatives, one of them being her nephew and other being her niece. Since she was issueless, there was nothing unusual in her bequeathing major part of her estate to her nephew or her niece. The disposition, therefore, cannot be said to be unnatural, improbable or unfair. There is no evidence of the any of the beneficiaries of the Will having taken part in the execution of the Will. There is no evidence of the Will containing any incorrect statement of the fact. The probate

has been sought in the same year in which the testator died. More importantly, despite citation having been published in newspaper, no one has come forward to dispute the authenticity of the Will setup by the petitioner. The report of the Chief Revenue Controlling Authority is reported to have been received.

8. It is, therefore, directed that probate of the Will dated 21st August 2000 executed by late Smt. P. Lakshmi Bhanu Rao, with copy of the Will annexed to it, be granted to the petitioner as per Rules.

(V.K. JAIN)
JUDGE

APRIL 20, 2011

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