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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment Reserved on: July 31, 2012
Judgment Pronounced on: August 06, 2012

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RFA(OS) 16/2007

DR.PREM BHATNAGAR THRU'S LRS Appellants
Represented by: Ms.Mala Goel, Advocate for LR's of
the appellant.

versus

RAVI MOHAN BHATNAGAR & ORS. Respondents
Represented by: Mr.S.K.Bhattacharya with
Mr.Suresh Bharti, Advocates for R-
1,5, 6 & 7.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE MANMOHAN SINGH

PRADEEP NANDRAJOG, J.

1. The common ancestor to whom the parties trace their lineage is one Roop Narain, who was the perpetual lessee, as per perpetual lease Ex.PW-1/1 dated July 28, 1939, of a plot of land ad-measuring 212.5 sq. yds. bearing Municipal No.205-C/32, New Capital of Delhi; re-numbered as 37, Todarmal Lane, Bengali Market, New Delhi. (Hereinafter referred to as the suit property). He admittedly died intestate on June 11, 1957, and was survived by two sons named Amar Nath and Prem Nath as also four daughters named Manbari, Prem Dulari, Saran Dulari and Tarawati. The brother and the four sisters executed a relinquishment deed Ex.DW-1/1 on October 29, 1958 in favour of their brother Amar Nath, who thus inherited the perpetual lease-hold rights in the property upon the death of Roop Narain. A residential building was constructed on the plot by Roop Narain and thus the

ownership of the building was inherited by Amar Nath upon death of Roop Narain and Amar Nath's brother and sisters executing the relinquishment deed Ex.DW-1/1.

2. Amar Nath had two wives named Kamla Devi and Chand Rani, both of whom pre-deceased Amar Nath.

3. From Kamla Devi two sons named Prem Bhatnagar and Daya Narain were born to Amar Nath. From Chand Rani three sons named Ravi Mohan, Vijay Mohan and Madan Mohan and two daughters Roop Rani (Roop Chandra) and Vijay Laxmi were born to Amar Nath. Madan Mohan having died, was survived by his wife Uma and his son Mohit. Amar Nath died on September 30, 1995.

4. Dispute arose on account of Prem Bhatnagar and his brother Daya Narain i.e. the two sons born to Amar Nath from his first wife Kamla Devi as also Uma and her son Mohit claiming a right in the estate of Amar Nath by taking a stand that Amar Nath died intestate and further that the suit property was ancestral property. They claimed that on the death of Amar Nath a deemed partition would result, as a consequence whereof the five sons of Amar Nath (the heirs of the deceased son taking the share of the son) would have $\frac{1}{6}^{\text{th}}$ share each in the joint properties and the remainder $\frac{1}{6}^{\text{th}}$ share of Amar Nath would be inherited by the five sons and the two daughters. But for reasons unexplained, it is pleaded in the plaint instituted by Prem Bhatnagar that the share of the five sons would be $\frac{1}{6} + \frac{1}{48} = \frac{9}{48}$ and that of the two daughters would be $\frac{1}{48}$. It is simple mathematics. If five persons are to get $\frac{9}{48}$ each, the total would be $\frac{45}{48}$ and add thereon $\frac{1}{48} + \frac{1}{48}$, the total would be $\frac{47}{48}$. Who gets the remainder by $\frac{1}{48}$? The error in the claim by Prem Bhatnagar is, that as per his pleadings, the share of the sons would be $\frac{1}{6}$

+ $1/42 = 8/42$. The five brothers would get a share $40/42$ and the two daughters would get $1/42$ each and the total would be $42/42 = 1$.

5. We hope that in the future lawyers, would reveal simple mathematic skills.

6. Sorry for the detour, but our reason for the detour is that of lately we have started finding extremely callous pleadings, requiring every now and then to inter splice our judgment with hyphens and colons, so that our thoughts find a coherent reflection in our written words.

7. Reverting back, Ravi Mohan, Vijay Mohan, Roop Rani (Roop Chandra), Usha and Vijay Laxmi took a stand that during his lifetime, their father Amar Nath had executed a will Ex.DW-1/2 on February 07, 1983 and the will in question was registered with the Registrar on the next day i.e. February 08, 1983. Under the will, the suit property has been bequeathed to Ravi Mohan.

8. And needless to state, ignoring the technical pleas of the parties with respect to their pleadings which gave birth to certain technical issues, the main issue debated between the parties was : Whether late Amar Nath had executed the will Ex.DW-1/2 i.e. whether the will was the last legal and valid testament executed by Amar Nath; and secondly : Whether the suit property was ancestral.

9. Vide impugned judgment and decree dated March 08, 2006, the finding returned by the learned Single Judge is that will Ex.DW-1/2 dated February 07, 1983, is the last legal and valid testament of late Sh.Amar Nath and that the suit property was not ancestral property and thus late Amar Nath could bequeath the property by executing the will in question.

10. With respect to the property being ancestral in the hands of Amar Nath, case of the protagonist i.e. those who questioned the will was that since Amar Nath inherited the property from his father Roop Narain, law imparted an ancestral character to the property. This stand has been negated by the learned Single Judge, while deciding Issue No.3, by noting that Roop Narain died intestate on June 11, 1957 leaving behind two sons and four daughters and thus each sibling inherited 1/6th share in the property and since the brother and the four sisters of Amar Nath executed the deed of relinquishment Ex.DW-1/1, Amar Nath became the owner of the full property i.e. succession by Amar Nath to the full property was not as the only heir of his father. Secondly, that when Roop Narain died, the Hindu Succession Act, 1956 had been promulgated; as per Section 4 whereof the provisions of the Act expressly had overriding effect over any text, rule, custom or usage amongst Hindus which was contrary to the Act. Pertaining to male Hindus dying intestate, the learned Single Judge has noted that succession would be as per Section 8 of the Hindu Succession Act, 1956. The learned Single Judge noted, for the former view taken, the concept of obstructed and unobstructed heritage and the decisions of the Punjab and Haryana High Court reported as AIR 1997 P&H 198 Dharm Singh & Ors. vs. Sadhu Singh (deceased) by LRs. & Ors. and AIR 1985 P&H 238 Prithi vs. Yatinder Kumar & Ors., as per which, if on the death of a male Hindu his natural heirs execute relinquishment deed, the person in whose favour relinquishment is effected acquires personal interest in the property and not that the property would be treated ancestral in his hand. A decision of the Delhi High Court on the point reported as 1991 (3) Delhi Lawyers 275 Rahul Behl & Ors. vs.

Smt. Ichayan Behl & Anr. has also been noted. On the subject of customary Hindu law ceasing to apply after the promulgation of the Hindu Succession Act, 1956, the learned Single Judge has noted the decisions of the Supreme Court reported as AIR 1986 SC 1753 Commissioner of Wealth Tax, Kanpur vs. Chander Sen and AIR 1987 SC 558 Yudhishter vs. Ashok Kumar, para 10 whereof, has been extracted by the learned Single Judge.

11. Learned counsel for the plaintiff/appellant argued that Prem Bhatnagar, son of Amar Nath was admittedly born before Roop Narain died on June 11, 1956 and thus urged that by virtue being born in a Hindu family, by birth, Prem Bhatnagar acquired an interest in his grand-father's property. On this reasoning, the two decisions of the Supreme Court relied upon by the learned Single Judge were sought to be distinguished.

12. The argument needs to be noted and rejected and for which rejection not much reasoning is required to be given for the reason, the text of Hindu law is that a male Hindu, on birth, acquires an interest in the joint Hindu family properties. If there was a joint Hindu family property when Prem Bhatnagar was born, he could have possibly argued that he acquired an interest in the property by birth. But, when Prem Bhatnagar was born, there neither was a joint Hindu family nor any property belonging to the joint Hindu family. The suit property was owned by his grand-father Roop Narain and parties are not at variance that Roop Narain acquired the property from his own funds. Thus, Roop Narain held the property as his individual property and not as joint family property. He died on June 11, 1957, by which date the Hindu Succession Act, 1956 was in operation. Thus, succession to

the estate of Roop Narain was as per Section 8 of the Hindu Succession Act, 1956 since Roop Narain died intestate.

13. In view of the clear enunciation of the legal position by the Supreme Court, as per the two decisions noted by the learned Single Judge, citations whereof have been noted by us in paragraph 10 above, we concur with the view taken by the learned Single Judge that as a result of the brother and four sisters of Amar Nath executing the relinquishment deed Ex.DW-1/1; and for the reason succession to the estate of Roop Narain ripened when the Hindu Succession Act, 1956 was operative, the suit property was held as personal to him by Amar Nath.

14. On the subject of the will Ex.DW-1/2 being the last legal and valid testament of the deceased, the learned Single Judge has adjudicated the matter under Issue No.4. The learned Single Judge has noted that Roop Rani (Roop Chandra), defendant No.5, who was the daughter of Amar Nath was an attesting witness to the will and had deposed to prove the will. In view of the testimony of Roop Rani (Roop Chandra), the learned Single Judge has accepted the due execution of the will Ex.DW-1/2.

15. Questioning the finding returned by the learned Single Judge with respect to the will Ex.DW-1/2, learned counsel for the plaintiff/appellant urged that the learned Single Judge overlooked the fact that Roop Rani (Roop Chandra) was an interested witness, inasmuch as the will Ex.DW-1/2 records that Ravi Mohan could not sell the property without the consent of his sister Roop Chandra. Secondly, it was urged that the learned Single Judge overlooked the suspicious nature of the will; being the unnatural and disproportionate bequest i.e. only one child being bequeathed the estate by the father

and others getting nothing. Learned counsel urged that the wedding cards Ex.PW-2/1, Ex.PW-2/3 and also Ex.PW-2/5 and the marriage photographs Exs.P-2, P-3 etc. showed that during his lifetime, Amar Nath was having good social relations with all his family members and thus counsel urged that there was no reason for Amar Nath not to give anything to his other children. Letter Ex.PW-2/4 addressed to the appellant by Amar Nath on January 31, 1995 was also relied upon as proof of good relationship between the plaintiff/appellant and his father.

16. The will in question bears the signature of Roop Rani (Roop Chandra) and one Ram Avtar Aggarwal as witnesses to the will. As deposed to by Roop Rani (Roop Chandra), her father had signed the will in token of it being duly executed in her presence and thereafter she and Ram Avtar Aggarwal signed the will as attesting witnesses. She has been subjected to cross-examination and learned counsel for the appellant could show nothing to us therefrom which would discredit Roop Rani (Roop Chandra).

17. People making disproportionate bequest, is not an unknown thing in law. After all, one object of a will is to alter the natural line of succession or a share in a property which may be inherited by devolution of interest. A disproportionate bequest by itself is not a suspicious circumstance. That relationship between a father and all his children was equally good and yet in spite thereof only one child is made the beneficiary is again not a suspicious circumstance by itself. If we read the will Ex.DW-1/2, which runs into four pages, we get a reason as to why the deceased decided to bequeath his only property to one son. He records that during his lifetime, the daughters have been married and are happily settled and that

all sons are well settled and living separately, except two sons i.e. Vijay Mohan and Ravi Mohan. He notes that Ravi Mohan has been looking after him and when he i.e. Amar Nath faced financial hardship on account of his business as a contractor suffering loss, it was Ravi Mohan who looked after him and discharged duties as an obedient son, not only towards him but even towards the other family members.

18. We find that the will has been registered before the Sub-Registrar the day next of his execution. There being additions made in line No.17 at page 3 of the will, the Sub-Registrar has made an endorsement at the back of the will to the effect; '*Addition made at page No.3, line No.17 is attested by the testator*'. Not only has each page of the will been signed by Amar Nath, the executor of the will, he has also signed the will at the place where he was required to sign when he appeared before the Sub-Registrar for getting the will registered. The endorsement on the will by the Sub-Registrar would show that Roop Rani (Roop Chandra) and Ram Avtar Aggarwal were also present in the office of the Sub-Registrar when the will was registered.

19. With reference to the cross-examination of Roop Rani (Roop Chandra), we find not even a suggestion made to Roop Chandra that there is contrivance in the will be registered.

20. In the decision reported as (22) 1982 DLT 301 (DB) Rajinder Nath Sharma & Ors. vs. Rani Chander Kanta & Ors., a Division Bench of this Court had opined that if a will is registered, there is a presumption of genuineness; of course the presumption is rebuttable. The same view has been reiterated by another Division Bench in the decision reported as 157 (2009) DLT 769 (DB) Rajesh Kumar Gaur & Ors. vs.

Vipin Gaur. The decision also holds that where a will is registered and the testator has got the will registered by appearing before the Sub-Registrar, it would prima-facie show a sound disposing mind of the testator and unless some defect in registration could be shown, the Court would prima-facie support such a will.

21. That the testator has written that the beneficiary i.e. Ravi Mohan would need the consent of Roop Rani (Roop Chandra) before he would sell the property does not make Roop Rani (Roop Chandra) an interest witness. She has no interest inasmuch as nothing has been bequeathed to her. The condition in the will that if Ravi Mohan were to sell the property, he would need the permission from Roop Rani (Roop Chandra) is void, for the reason the bequest in favour of Ravi Mohan is absolute and since mode of enjoyment cannot be curtailed; a clause curtailing the same in the bequest is void.

22. The appeal is dismissed with costs, payable by the appellant to respondent No.1.

(PRADEEP NANDRAJOG)
JUDGE

(MANMOHAN SINGH)
JUDGE

AUGUST 06, 2012
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