

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

+ (1) TEST. CAS. 91/2008

SHRI AMARJEET SINGH Petitioner
Through: Mr. Rajat Aneja and Mr. S.
Sethu Mahendran, Advocates

versus

THE STATE Respondent
Through: Mr. Bhupesh Narula and
Mr. Ajay Kumar, Advocates.

+ (2) TEST. CAS. 63/2010

APJIT SINGH Petitioner
Through: Mr. Bhupesh Narula and
Mr. Ajay Kumar, Advocates.

Versus

STATE & ORS. Respondents
Through: Mr. Rajat Aneja and Mr. S.
Sethu Mahendran, Advocates

% Date of Decision : April 24, 2012

**CORAM:
HON'BLE MS. JUSTICE REVA KHETRAPAL**

JUDGMENT

: REVA KHETRAPAL, J.

1. By this common judgment, it is proposed to decide Test Case No.91/2008 and Test Case No.63/2010 which were consolidated to be heard together by order dated December 21, 2010. The consolidation was ordered on account of the fact that both the aforesaid cases relate to the last will and testament of late Smt. Harbans Kaur.

2. In Test Case No.91/2008 the petitioner Shri Amarjeet Singh, one of the sons of the deceased late Smt. Harbans Kaur, sought to propound the will dated 27th April, 2007 allegedly executed by his deceased mother during her lifetime. It is the case of the petitioner Shri Amarjeet Singh that late Smt. Harbans Kaur bequeathed her entire property bearing No.F-3, Gautam Nagar, New Delhi, measuring about 130 sq. meters, allotted to her by Delhi Development Authority in favour of the petitioner, and accordingly after her death the petitioner is the sole beneficiary of the said property in accordance with her aforesaid will. It is stated that the said will was executed by the deceased in sound health and without any pressure and the same was duly attested by two witnesses. It is also asserted that the said

will is the final will and testament of the deceased. The deceased had left behind as her legal heirs five sons, two married daughters and the widow and daughter of a pre-deceased son.

3. In Test Case No.63/2010, the petitioner Apjit Singh has sought probate of the last will and testament of the deceased Smt. Harbans Kaur dated 14.10.2007, whereunder the deceased bequeathed one-fifth of the sale proceeds of her immovable property bearing House No.F-3, Gautam Nagar, New Delhi in favour of the petitioner and further bequeathed one-fifth share each to her other living sons. On 21.12.2010, both the testamentary cases, as stated above, were consolidated. On the same date, the following issues were framed:-

- “(i) Which of the Wills propounded in the Testamentary Cases i.e. the one dated 27.4.2007 or 14.10.2007 is the last, valid and enforceable Will and testament of Late Smt. Harbans Kaur? Onus on parties.*
- (ii) Is any of the said Wills not enforceable for reasons of existence of any vitiating or suspicious circumstances? Onus on parties.*
- (iii) Relief.”*

4. Oral evidence was recorded in Test Case No.63/2010. Exhibits and documents were also marked in the same case as directed by the Court.

5. The petitioner in Test Case No.63/2010 Shri Apjit Singh, however, failed to adduce any evidence despite ample opportunity granted to him for the aforesaid purpose. Consequently, by order dated August 24, 2011, his right to lead evidence was closed. The petitioner Amarjeet Singh in Test Case No.91/2008 tendered in evidence his affidavit of evidence Ex.OW1/A, relying upon the documents mentioned in the said affidavit as Ex.OW1/1 to Ex.OW1/6. After examining himself, he produced in the witness box three other witnesses, namely, Shri J.S. Chahal, the attesting witness to the will dated 27th April, 2007 as OW2, Shri Satya Pal from the office of the Sub-Registrar as OW3 and Shri Brahm Prakash, a witness from Canara Bank, Green Park, New Delhi as OW4.

6. The petitioner Shri Amarjeet Singh in his affidavit by way of evidence (Ex OW1/A) testified that the deceased Smt. Harbans Kaur, wife of late Shri Kabir Singh, was his mother who expired at Delhi on 27.01.2008. He proved on record her original death certificate as

Ex.OW1/1 and her original will dated 27.04.2007 as Ex.OW1/2. He also proved on record the original death certificate of late Shri Joginder Singh, one of the attesting witnesses of the said will as Ex.OW1/3 and the original letter dated 19.01.2011 issued by Canara Bank, Green Park Extension Branch, New Delhi certifying the specimen signatures of the testatrix as available in their record of Savings Bank Account No.0350101006510 as Ex.OW1/4. He stated that his deceased mother left behind her five living sons, two daughters and the widow and daughter of a pre-deceased son. However, he alone was living with his mother and looking after her and he alone was the beneficiary under her will dated 27.04.2007. He deposed that his brother Shri Apjit Singh had forged and fabricated an unregistered will dated 14.10.2007 in collusion with one Shri Harpal Singh, who had been shown as one of the attesting witnesses to the alleged will dated 14.10.2007, which was never executed by his deceased mother. He proved on record criminal complaint dated 03.07.2008 lodged by him against Shri Apjit Singh and Shri Harpal Singh with Police Station Defence Colony, New Delhi bearing endorsement dated 07.07.2008 by way of receipt (Ex.OW1/5). He

stated that the original documents pertaining to the medical treatment of his deceased mother were Ex.OW1/6 (collectively). At the time of the execution of her will, his deceased mother was in a sound disposing mind and the will executed by her in his favour dated 27.04.2007 was the last will of his mother and was a genuine one.

7. Shri J.S. Chahal in his affidavit by way of evidence, (Ex.OW2/A) stated on oath that late Smt. Harbans Kaur executed a will dated 27.04.2007 in his presence and in the presence of the other attesting witness, namely, Shri Joginder Singh (now deceased) and that both of them had signed as attesting witnesses in the presence of late Smt. Harbans Kaur and in the presence of each other, all three being present at the same time in the office of the Sub-Registrar. He affirmed that the original will dated 27.04.2007 was Ex.OW1/2 and stated that late Smt. Harbans Kaur was of sound disposing mind when she affixed her signature on the aforesaid will in his presence.

8. Shri Satya Pal, Record Attendant, Department of Archives/Sub-Registrar, in the course of his evidence as OW-3 produced Book–Volume No.1460, which contained the record in respect of registration of will of late Smt. Harbans Kaur dated

27.04.2007, which depicted registration of the said Will on 27.04.2007 vide Registration No.456 in Book No.3, Volume No.1460 on pages 194 to 196. The said witness further stated that the original of the will dated 27.04.2007 (Ex.OW1/2) was the same and matched with the record produced by him.

9. The petitioner then sought to prove the original account opening form of late Smt. Harbans Kaur pertaining to Account No.6510 dated 12.10.2000 containing her specimen signatures at point 'A' by examining OW4 – Shri Brahm Prakash from Canara Bank, Green Park Branch, New Delhi, who placed on record the attested true copy of the aforesaid document certified by the Senior Manager as Ex.OW4/1 along with the specimen signatures of late Smt. Harbans Kaur.

10. All aforesaid witnesses though appeared in the witness-box were not subjected to cross-examination and their statements are unrebutted and unchallenged on record. Thus, there is on record the unchallenged testimony of the petitioner-Shri Amarjeet Singh with regard to the will dated 27.04.2007 propounded by him and the testimony of the attesting witness, namely, Shri J.S. Chahal to the said

will, who has stated on oath that the will was attested by him and by the other attesting witness, namely, Shri Joginder Singh (since deceased) in the presence of each other and in the presence of the deceased testatrix, who had also signed in the presence of both of them. There is also on record the statement of the official from the office of the Sub-Registrar, who proved that the will dated 27.04.2007 was duly registered in the office of the Sub-Registrar and that original Will Ex.OW1/2 is the same as the registered will found on the records of the Sub-Registrar.

11. The petitioner in Test Case No.63/2010 Shri Apjit Singh has, on the other hand, altogether failed to produce any evidence to substantiate the execution of the will propounded by him, being the will dated 14.10.2007. It may be mentioned at this juncture that though objections had been filed in Test Case No. 91/2008 by the four sons of the deceased testatrix, jointly to the will dated 27.04.2007, namely, by Shri Paramjeet Singh, Shri Baljeet Singh, Shri Satinder Pal Singh and Shri Apjit Singh on 10.02.2009; and Smt. Gurmeet Kaur and Smt. Gunwant Kaur (daughter and daughter-in-law of the deceased testatrix respectively) also filed objections to the same on

02.07.2009. The objectors including Shri Apjit Singh did not adduce an iota of evidence to challenge the will dated 27.04.2007 propounded by the Shri Amarjeet Singh nor adduced any evidence to prove that will dated 27.04.2007 was a forged and fabricated document. Moreover, an application was filed by the wife of late Shri Joginder Singh stating that Apjit Singh had forged the signatures of her husband on the Will dated 14.10.2007 as an attesting witness and in fact, her husband was hospitalised due to kidney problem and could not move from the bed from 20.09.2007 till the date of his death. One of the daughter of the deceased testatrix, namely, Smt. Kuldeep Kaur in the reply filed by her affirmed that her mother, late Smt. Harbans Kaur had during her lifetime executed will dated 27.04.2007, bequeathing her property in favour of the petitioner Shri Amarjeet Singh exclusively and that she was in a sound disposing mind at that time. Further she stated that Shri Apjit Singh, her brother, had forged and fabricated an unregistered will dated 14.10.2007.

12. From the aforesaid, it is not difficult for this Court to arrive at the conclusion that the will dated 27th April, 2007 propounded by Shri Amarjeet Singh, has been duly proved on record as the last and final

will and testament of the deceased testatrix- Smt. Harbans Kaur. The statement made on oath in this regard by Shri Amarjeet Singh has not been challenged in cross-examination. The execution of the aforesaid will also stands established from the statement of the attesting witness, whose testimony is also unrebutted on record. The registration of the will is also proved on record through the testimony of Shri Satya Pal-OW3, from the office of the Sub-Registrar. There is also nothing on record to suggest that the deceased was not in a sound disposing mind at the time of the execution of the will nor as a matter of fact, there are any suspicious circumstances casting a cloud on the authenticity of the will. The will dated 27.04.2007 Ex.OW1/2 is thus held to be the last and final will and testament of Smt. Harbans Kaur.

13. In view of the aforesaid, the petitioner in Test Case No.91/2008 is held entitled to the grant of Letters of Administration in his favour subject to his fulfilling the necessary formalities including furnishing of stamp duty, surety bond, etc.

14. In the result, Test Case No.91/2008 is allowed. IA Nos.11781/2008 also stands disposed of.

15. Test Case No.63/2010 stands dismissed.

**REVA KHETRAPAL
(JUDGE)**

**APRIL 24, 2012
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