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IN THE HIGH COURT OF DELHI AT NEW DELHI

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FAO 182/2006

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20th May, 2014

NARENDER SINGH CHAWLA ALIAS NARAIN SINGH CHAWLA

.....Appellant

Through: Mr. Sanjiv Bahl and Mr. Eklavya
Bahl, Advocates.

VERSUS

STATE & ORS.

..... Respondents

Through: Mr. H.N.Singh, Mr. Assem Malhotra
and Mr. Dewan Singh Chauhan,
Advocates for R-2 and 3.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This first appeal is filed under Section 299 of the Indian Succession Act, 1925 by the objector Narender Singh Chawla @ Narain Singh Chawla against the impugned judgment of the probate court dated 16.5.2006 which has allowed the probate petition filed by the respondent nos. 2 and 3 herein. By the impugned judgment dated 16.5.2006, respondent nos. 1 and 2/petitioners have been granted a probate with respect to the Will dated 30.10.1982 executed by the father of the respondent no.2 and the

father-in-law of respondent no.3 namely one Sh. Sardar Singh. Sh. Sardar Singh had a half undivided share in the property bearing no. 5/48, WEA, Karol Bagh, New Delhi and which was bequeathed by the subject Will dated 30.10.1982 in favour of the petitioners. Late Sh. Sardar Singh expired on 7.8.1989 at Bangkok. The subject Will which is dated 30.10.1982, was registered on the date of execution with the sub-Registrar, Delhi.

2. Objections to the probate petition were filed by the appellant herein and the respondent no.5-Sh. Tarjit Singh Chawla. The basic objection raised by the appellant was that the Will relied upon by the petitioners/respondent nos. 2 and 3, dated 30.10.1982, was superseded by the subsequent Will dated 6.11.1987 executed by the father Sh. Sardar Singh.

3. Before the probate court below, the petitioners/respondent nos. 1 and 2 proved the execution and registration of the Will. Registration was proved through the witness PW-1 who was an LDC from the office of the sub-Registrar. PW-2 Sh. Inder Singh was the attesting witness to the Will and he proved the Will dated 30.10.1982 as Ex.PW2/1 after depositing with regard to the due execution and attestation of the Will as required by law.

4. PW-3 was the respondent no.2 and he deposed with regard to sound disposing mind of his father and also of the father having executed

and registered the Will dated 30.10.1982 and that this Will was given to the respondent no.2 by the father in the beginning of the year 1988.

5. As regards the proof of the Will, the probate court has held the Will to be proved by making the relevant observations in paras 11 and 12 of the impugned judgment which read as under:-

“11. Before proceeding further, I would like to analyse the evidence of the petitioners to find out if they have been able to prove the due execution of Will dated 30.10.1982. As stated above, PW-2 Sh. Inder Singh is the attesting witness of the Will dated 30.10.1982. PW-2 Inder Singh has deposed that Sardar Singh had executed the Will in favour of Kirpal Singh and Kuldeep Kaur. He identified the signatures of Sh. Sardar Singh at point A on the original Will exbt. PW2/1. He also identified the signatures of Sh. G.R.Malik and Sh. Joginder Pal advocate at points C and D on the Will. He also deposed that he had gone to the office of Sub Registrar at Asaf Ali Road. He identified his signatures on the back side of the Will at point E and that of Sardar Singh at point F. He stated that Sardar Singh had signed at point A & F in his presence in the office of Sub Registrar. He further stated that Sardar Singh was in sound disposing mind at the time of execution of the Will and had not executed the Will under any pressure, coercion or inducement. In cross examination, he has stated that Sardar Singh had signed at point A while sitting in the office of Sub Registrar and then he had also signed in the presence of Sub Registrar at point F. He further stated in cross examination that other witnesses had also signed in his presence. He denied the suggestion that he had not signed in the presence of Sardar Singh or that Sardar Singh had not signed in his presence. About his acquaintance with the testator, he stated that he knew Sardar Singh since the

year 1964 as he belonged to Village Jokhian, which was near to his village. Regarding the physical and mental condition of the testator, it has come in the cross examination of OW-1 Sardar Narain Singh that physical and mental condition of the testator was quite well till the year 1995. He was in perfect health and mental condition till his death. Similarly, OW-2 Sardar Harminder Singh also in his cross examination says that his father was enjoying good health and was possessed with sound mind till the year 1987. Similarly, OW-4 Tarjit Singh in his cross examination has stated that his father was mentally sound at the time of execution of the Will in his favour in the year 1988. He stated that because of advance age, his father had started forgetting the things 6-7 years before his death. Sardar Singh had expired on 07.08.1989. If the statement of OW-4 is to be accepted, it means that Sardar Singh was having good physical and mental condition till 1983.

12. Nothing of substance has been suggested or elicited in the cross examination of witnesses of petitioners to challenge the veracity of their statements of due execution of the Will. The propounder has been able to show by cogent and satisfactory evidence that the Will in question is signed by the testator. The testator at the relevant time was in a sound and disposing state of mind. He put his signatures on the document of his own free will.”
(underlining added)

6. On behalf of the appellant, much arguments could not be raised with respect to the proof of execution and attestation of the Will dated 30.10.1982 Ex.PW2/1, and reliance on behalf of the appellant was essentially placed on the subsequent Will dated 6.11.1987 of late Sh. Sardar Singh. As regards this subsequent Will dated 6.11.1987, the court below has

given the following observations for rejecting this Will and which are contained in paras 13 to 16 of the impugned judgment and which read as under:-

13. The main argument of the objectors is that Will dated 30.10.1982 has been revoked by subsequent Will dated 06.11.1987. Under Section 68 of the Evidence Act, a Will can be proved by examining at least one of the attesting witnesses, although, the party propounding Will is not under any obligation to produce both the attesting witnesses. In this case, the objectors have neither filed the original Will dated 06.11.1987 nor they have examined any of the attesting witnesses of the alleged Will dated 06.11.1987. OW-3 Anand Pattiawongse, who is the son of one of the attesting witnesses Kuldeep Singh Bhatia, has been examined by the objectors. He has only identified the signatures of his father at point Y1 and Y2 and that too on the photocopy of the Will Mark-Z. He nowhere says that he was present at the time of execution of the Will dated 06.11.1987. The photocopy of the Will dated 06.11.1987 Mark-Z contains the endorsement made by Kuldeep Singh Bhatia in original to the effect that he has signed as a witness on the Will in the presence of Sardar Singh and Sardar Rachpal Singh Narula. This endorsement is witnessed by OW-3 Anand Pattiawongse. The very fact that photocopy of the Will contains the original endorsement of the attesting witness is not natural. Where was the need for the attesting witness to give such an endorsement underneath the photocopy of the Will? Objectors have not been able to produce Sardar Kuldeep Singh Bhatia as he had expired on 19.12.1994. But there is no explanation for not producing the second attesting witness Rachpal Singh Narula in court for proving the second Will dated 06.11.1987 executed by late Sh. Sardar Singh.

14. OW-1 Sh. Narinder Singh Chawla does not deny the execution of Will dated 30.10.1982. In fact, he says in cross examination that he does not know whether his father had executed the Will dated 30.10.1982, in respect of the Karol

Bagh properly. OW-2 Harminder Singh in his cross examination says that he has no knowledge that his father had executed any Will in respect of Karol Bagh property on 30.10.1982. On further cross examination, he admits that the Will dated 06.11.1987 is not in respect of Karol Bagh property. It is pertinent to mention that OW-2 Harminder Singh had initially submitted his no objection in court to the grant of probate with regard to the Will dated 30.10.1982 in favour of the petitioners. He was confronted with his no objection exbt. OW-2/5. He has admitted having given no objection exbt. OW-2/5. He was also confronted with the document/writing exbt. OW-2/1, executed by him wherein, he has specifically stated that property No.5/48, WEA, Karol Bagh, New Delhi has been willed by his father Sh. Sardar Singh to his brother Sh. Kirpal Singh and his wife Smt. Kuldip Kaur. It is also stated in document exbt. OW-2/1 that his father had told him about this Will a month before he expired and that the Will dated 30.10.1982 was never cancelled. In exbt. OW-2/1, it is further mentioned that Will dated 06.11.1987, referred by Narinder Singh is only a memorandum regarding the remaining property. By virtue of exbt. OW-2/1, Harminder Singh gave his no objection to the Will dated 30.10.1982 and the transfer of house No.5/48, WEA, Karol Bagh, New Delhi to Kirpal Singh. OW-2 Harminder Singh has admitted having executed Exhibit OW2/1 but has not given any explanation for later on challenging the Will dated 30.10.1982.

15. OW-4 Tarjit Singh has admitted that the Will Exbt.PW2/1 dated 30.10.82 propounded by the petitioners bears the signatures of his father at points A, F & G. OW-4 has come up with a new story in his evidence of there being two Wills, one of which was executed in the year 1987 and the other in the year 1988. However, he neither produced the original Will, allegedly executed in the year 1988 nor proved the same on record. Regarding the Will of the year 1987, he has submitted that he has no personal knowledge of the execution of the said Will.

16. PW-3 Kirpal Singh Chawla in his examination-in-chief has stated that the Will dated 30.10.1982 was handed over to

him by his father in the beginning of 1988. In cross examination, he stated that he had received the Will in the beginning of 1988 and had not seen the Will earlier to that. There is no suggestion from the side of the objectors that Will was not handed over to him by his father in the year 1988. Hence, if the testator had executed any Will dated 06.11.1987, revoking his earlier Will, he would not have handed over the Will dated 30.10.1982 to petitioner No.1.”

(underlining added)

7. I completely agree with the aforesaid conclusions of the probate court because OW-3 Sh. Anand Pattiyawongse who was the son of one of the attesting witnesses Sh. Kuldeep Singh Bhatia, no doubt was examined by the objectors, but, he did not prove the due execution and attestation of the Will inasmuch as, this witness OW-3 only identified the signatures of his father at points Y-1 and Y-2 on the photocopy of the Will dated 6.11.1987 which is marked Z. This witness did not give such deposition which would show due execution and attestation of the Will as per Section 63 of the Indian Succession Act i.e the executor/testator/late Sh. Sardar Singh had signed the Will in the presence of the attesting witnesses and that the attesting witnesses had signed in the presence of the testator Sardar Singh. The probate court also rightly notes that the objectors failed to give any explanation for not producing the second witness namely Rachpal Singh Narula for proving of the alleged subsequent Will dated 6.11.1987.

8. I may note that the objectors did not file before the court below original of the Will dated 6.11.1987. In my opinion, this itself is sufficient to reject the case of the objectors based upon the Will dated 6.11.1987, inasmuch as, a photocopy of the Will cannot be relied upon, because, a Will can be revoked even if it is shown to be duly executed, if the said Will is destroyed by the testator by a deliberate act whether of tearing up or of burning etc etc. Courts are therefore extremely reluctant to rely upon a photocopy of a Will, unless clinching evidence is led to show that the original of the Will was not destroyed by the testator by his deliberate act. In the present case, the only contention of the objector was that the original of the Will dated 6.11.1987 was with one Sh. Joginder Singh, son-in-law of the deceased testator Sardar Singh, however, the said witness was not brought into the witness box on behalf of the objectors/appellants to establish the contention with respect to the original Will dated 6.11.1987 existing and not being destroyed by a deliberate act of the testator. For the sake of completion of narration, I may state that issues with respect to limited grants of a copy or draft of an original Will are provided for in Sections 237 to 240 of the Indian Succession Act, 1925 and in which provisions it is stated that the Will can be revoked by a deliberate act of the testator by destroying the Will.

9. The probate court below has also rightly referred to the fact that the appellant does not deny execution of the Will dated 30.10.1982 because the appellant/objector only stated that he did not know whether his father Sardar Singh had executed the Will dated 30.10.1982. It may be noted that the appellant in fact had originally given no objection Ex.Ow2/5 admitting to the execution of the Will dated 30.10.1982, however, subsequently, he objected to the Will for reasons best known to him and accordingly the probate court below has disbelieved the testimony of the appellant/objector by making the observations in para 14 of the impugned judgment and which has already been reproduced above and with which I completely agree.

10. So far as the other objector Tarjit Singh Chawla-respondent no.5 is concerned, the court below notes that Tarjit Singh in his testimony came up with a totally new case of a Will of the year 1988, however not only this Will was not the subject matter of any specific pleading, but also this so-called Will of the year 1988 was never produced before the Court. This has been observed by the probate court in para 15 of the impugned judgment which has been reproduced above.

11. No other issue or point is urged before this Court.

12. In view of the above, I hold that the probate court below has rightly granted probate with respect to the Will Ex.PW2/1 dated 30.10.1982 executed by Sh. Sardar Singh in favour of the petitioners/respondent nos. 2 and 3. The appeal is therefore dismissed, leaving the parties to bear their own costs.

MAY 20, 2014
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VALMIKI J. MEHTA, J.