

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

+ **FAO 370/2006**

% **Reserved on : 8th July , 2014**
Pronounced on : 19th August, 2014

AMARJEET SINGH Appellant
Through: **Mr. Bahar U. Baraqui, Advocate**

VERSUS

VIMAL TANEJA AND ANR. Respondents
Through: **None.**

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J

1. This first appeal is filed under Section 299 of the Indian Succession Act, 1925 against the judgment of the court below dated 22.8.2006 by which the probate petition filed by the respondents herein namely Ms. Vimal Taneja and Sh. Ravinder Singh, the unmarried daughter and the son of the testator Sh. Mangal Singh Taneja, has been allowed. The Will of late Sh. Mangal Singh Taneja which has been probated was executed by late Sh. Mangal Singh Taneja on 28.2.1994. The same was duly registered on 11.3.1994 by calling the Sub-Registrar at the residence of the testator.

2. The facts of the case are that the respondents herein applied for the probate of the Will of their father late Sh. Mangal Singh Taneja. The Will dated 28.2.1994 was attested by two attesting witnesses, namely, Sh. Gurmukh Singh Chatwal and Ms. Meena Malik. The Will was proved through the attesting witness Sh. Gurmukh Singh Chatwal who deposed to the due attestation and execution of the Will which was exhibited as Ex. PW-2/A. Besides the attesting witness respondent no. 1 Ms. Vimal Taneja, the unmarried daughter of late Sh. Mangal Singh Taneja deposed for grant of the probate.

3. A reading of the impugned judgment shows that because of the following reasons the probate court below has rightly held that the Will propounded by the respondents herein was duly proved and should be probated:

(i) The attesting witness Sh. Gurmukh Singh Chatwal deposed with respect to the execution and attestation of the Will in accordance with law. He deposed that it was false that his son namely Sh. Gurbans Singh (of Sh. Gurmukh Singh Chatwal) was adopted by the respondent no. 1 herein and that it was for that reason that Sh. Gurmukh Singh Chatwal allegedly was deposing in favour of the respondents. The fact of the matter is that no such adoption took place and it was not proved so by the present petitioner.

(ii) Besides the respondents, the testator died leaving behind three daughters Smt. Sharan Kaur (respondent no. 2 in the trial court), Smt. Charanjeet Kaur (respondent no. 4 in the trial court) and Smt. Harbans Kaur (respondent no. 5 in the trial court). None of these daughters filed any objection to the probate petition in spite of being duly served. These daughters were accordingly proceeded *ex parte* as they did not appear after service. It is relevant to note that after the death of one daughter Smt. Charanjeet Kaur (respondent no.4 in the trial court) in 2004 an application was filed by her legal heirs objecting to the Will, but, the trial court rightly dismissed this application noting that this application/objections were identically worded as the objections of the petitioner (respondent no.2 in the trial court) herein, showing collusion of the petitioner with the legal heirs of the Smt.Charanjeet Kaur and that since Late Smt. Charanjeet Kaur herself never filed any objections, the objections which were filed on behalf of her legal heirs could not be considered including for the reason that the legal heirs were living at the same address at which late Smt. Charanjeet Kaur was served.

(iii) Smt. Vimal Taneja/respondent no. 1 was unmarried and was taking care of her aged father, the testator, Sh. Mangal Singh Taneja as also of the

aged and invalid mother, and for which purpose she was living with her parents.

(iv) The petitioner/objector was well settled in Indonesia. In fact the business at Indonesia was started by the testator and handed over to the objector.

(v) The Will Ex. PW-2/A is duly registered and though registration is not proof of the validity of the Will, in the facts of the case, the registration of the Will is a factor which has to be considered in favour of the respondents herein. Both the attesting witnesses were present when the Sub-Registrar was called at the residence of the testator. Sub-Registrar also affixed a photograph of the testator on the Will.

(vi) The petitioner/objector admitted in his cross-examination that he met his father/testator about 5/6 months prior to his death and at that time also the testator was physically fit although he was of about 93 years.

(vii) The subject Will Ex. PW-2/A gives reasons for deviating from the earlier Will which was executed on 5.4.1977 and which was also duly registered. In the subject Will it is noted that respondent no. 1 was taking care of her aged parents and she was unmarried. It is also stated in this Will that in the earlier Will it was mentioned that the jewellery of the objector was lying with the testator's wife, but, thereafter the same was returned to

the objector by the testator's wife. The Will Ex. PW-2/A notes that respondent no. 1 Vimal Taneja was looking after the testator and his invalid wife for the last as many as 15 years.

4. In my opinion, the aforesaid reasons are justified reasons for granting probate of the Will Ex. PW-2/A.

5. I may note that the petitioner/objector had propounded a subsequent Will dated 23.5.1994, and which was proved as Ex. PW-2/1, but the probate court below has rightly discarded this Will for the following reasons:

(i) The Will Ex. PW-2/A as also the earlier Will dated 5.4.1977 of the testator were duly registered but the Will propounded by the petitioner/objector was not registered.

(ii) The respondent no. 1 deposed that none of the attesting witnesses ever visited the residence of the testator when the alleged Will Ex. PW-2/1 was allegedly said to be executed.

(iii) It has not been explained as to how the objector came to know about the Will Ex. PW-2/1, because, it was not the case of the objector that the Will was handed over to the objector by the attesting witness Sh. Harjeet Singh, PW-2, after execution of the same by the testator.

(iv) The trial court compared the signatures of the testator on the Will Ex. PW-2/A with the Will propounded by the petitioner/objector Ex. PW-2/1

and even to the naked eye the signatures appearing on the Will propounded by the petitioner were completely different than the signatures appearing on the Will Ex. PW-2/A. It is noted by the trial court that whereas the signatures of the testator appearing on the Will Ex. PW-2/A is of an old person, the signatures appearing on the Will propounded by the petitioner/objector, Ex. PW-2/1, are made in a very firm manner and are appearing to be of a comparatively younger person.

6. In my opinion, the trial court has for the aforesaid valid reasons rightly rejected the Will dated 23.5.1994 propounded by the petitioner/objector.

7. The aforesaid facts show that the probate court below has rightly granted probate of the Will including for the reasons that the respondent no. 1/unmarried daughter/Smt.Vimal Taneja was taking care of the testator and his invalid wife for 15 years prior to the execution of the Will, the objector was settled in Indonesia and had a business which was started by the testator and thereafter handed over to the objector, none of the other three daughters filed any objections to the Will, the Will was duly registered and that the same gives reasons for disinheriting the objector and for bequeathing the properties to the respondents herein.

8. In view of the above, there is no illegality or perversity in the impugned judgment of the court below for the same to be interfered with by this Court. The appeal is therefore dismissed, leaving the parties to bear their own costs.

AUGUST 19, 2014
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VALMIKI J. MEHTA, J