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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO 122/2014**

Decided on 14th October, 2014

SHRI GURTEJ SINGH	 Appellant
Through:	Mr. V. Elanchezhya, Adv.
versus	
THE STATE AND ORS	 Respondents
Through:	Mr. Shoaib Haider, Adv. for R-1.
	Mr. Kundan Kumar Lal, Adv. for R-2.
	Mr. L.K. Sharma and Mr. Ram Kumar Sharma, Adv. for R-3.

CORAM:
HON'BLE MR. JUSTICE A.K. PATHAK

A.K.PATHAK, J.(ORAL)

1. As per the service report respondent no.2 is not residing at the given address. However, Mr. Kundan Kumar Lal, Advocate has entered appearance on behalf of respondent no.2. Respondent no. 4 (a) to (d) has not appeared despite service. Since short point is involved arguments heard and trial court record perused and by this order appeal is being disposed of.
2. Respondent no. 2 filed a petition before the trial court for grant of Letter of Administration with the Will dated 31st July, 2003 of Late Shri Bali Singh (Testator) annexed. Appellant was impleaded as respondent no.2; whereas respondent nos. 3 and 4 in present appeal were impleaded as

respondent nos. 3 and 4 in the said petition. Respondent no. 4 died during the pendency of petition before the trial court and her legal representatives were impleaded as respondent nos. 4 (a) to 4 (d). By the impugned judgment, trial court has allowed the petition of respondent no.2 and has ordered for issuance of Letter of Administration with the copy of Will dated 31st July, 2003 (Ex. PW1/2) annexed, subject to furnishing of administration bond for ₹21,72,260/- with one surety in the like amount. Aggrieved by the judgment of trial court, appellant has preferred this appeal.

3. Respondent no.2 filed a petition before the trial court on 21st November, 2006 alleging therein that his father Late Shri Bali Singh died on 7th September, 2003. He was permanent resident of Delhi. Prior to his death Shri Bali Singh executed his last Will dated 31st July, 2003 duly registered with the Sub Registrar, North-West-VI A, Model Town, Pitampura, Delhi vide document no. 29947 Book No. III Volume 2912 at pages 24 to 29. It was alleged that original Will was in the custody of his brother, namely, Shri Gurmeet Singh, that is, respondent no.3. Will was duly executed by the Testator in presence of two witnesses, namely, Shri Inderjeet Singh S/o Shri S. Basant Singh R/o B-4/A, Sawa Park, Ashok Park, Phase-IV, Delhi and Shri Balvinder Singh S/o Shri S. Kartar Singh R/o 802, Hem Shikha Colony,

Near CRP Camp, District Panchkula, Haryana, in full disposing mind. Respondent no.2 further alleged that his mother Smt. Surjeet Kaur expired on 9th June, 2004. Testator left behind appellant and respondent nos. 2 to 4 as his legal heirs. Vide Will dated 31st July, 2003, Testator bequeathed his two properties in the following manner :-

“(i) Eastern half portion of above said built-up property bearing No. AW-33, built on land measuring 125.0 sq.meters (out of total 250.0 sq. meters), situated at Sanjay Gandhi Transport Nagar, Delhi – 110042 and (ii) Middle portion of above said built-up property bearing House No. A-329/1, area measuring 33.33 sq. yds. approx. (out of total 100.0 s. yds.) built on old Plot No. 42, out of Khasra No. 481/179, situated in the area of village Sadora Kalan, Colony known as Shastri Nagar, Bagh Dabarwala, Delhi – 110052 to the exclusion of all my other legal heirs and successors, he have full right to use, hold, enjoy, sell and transfer the same and get other benefits of the above said properties in my manner he likes after my death.

And whereas after my death my son S. Gurtej Singh shall have no any right, title or interest regarding the above said built-up property bearig No. AW-33, built-on land measuring 250.0 sq. meters, situated at Sanjay Gandhi Transport Nagar, Delhi – 110042 and my other two sons namely (i) S. Gurbachan Singh and (ii) S. Gurmeet Singh shall be liable to pay a sum of Rs.4,00,000/- (Rupees Four Lacs Only) in cash to my son S. Gurtej Singh or situated in the Sanjay Gandhi Transport Nagar, Delhi at their own costs and expenses in the name of S.Gurtej Singh.”

4. Details of the property were given in Schedule-A to the petition.
5. Respondent no. 2 alleged that appellant had filed a suit for declaration before the Civil Judge, Delhi praying therein that Will dated 31st July, 2003,

be declared null and void being forged and fabricated document. In the suit it was alleged that deceased had executed a previous Will dated 13th June, 2003 despite the fact that Will dated 31st July, 2003 was last will, inasmuch as, Testator had categorically stated in the Will dated 31st July, 2003, that it was his last Will and testament made after revoking and cancelling all his previous Wills. Respondent no.2 claimed that there was no impediment under any provision of law to the grant of Letter of Administration. It was prayed that Letter of Administration of the Will of Late Shri Bali Singh be granted in favour of respondent no.2.

6. Respondent no. 3 filed written statement stating therein that he had no objection to the grant of Letter of Administration in favour of respondent no.2.

7. Appellant and respondent no. 4 filed objections to the grant of Letter of Administration. It was alleged that respondent no.2 had no locus standi to file the petition since original Will was in the possession of respondent no.3. Respondent no.2 had concealed the factum of execution of Will dated 13th June, 2003, by Late Shri Bali Singh despite the fact that he was a witness to the said Will. Appellant and respondent no. 4 alleged that Will dated 31st July, 2003, was a forged Will. Petition filed by the respondent no. 2 was

counter blast to the civil suit filed by the appellant. Thumb impressions of Late Shri Bali Singh appearing on Will dated 31st July, 2003 were different than his thumb impressions appearing on the Will dated 13th June, 2003. It was alleged that Testator had already executed a registered Will dated 13th June, 2003, in a good state of mind and without any undue influence or coercion, therefore, there was no occasion for him to execute another registered Will on 31st July, 2003. Appellant and respondent no. 4 alleged that witnesses to the Will dated 31st July, 2003, were relatives of respondent no. 3 which reflected the ill motives of respondent no. 2. It was prayed that petition be dismissed. In rejoinder, respondent no.2 denied the averments made in the objections and reiterated what was stated in the probate petition.

8. It may be noted that citation was published in the newspaper 'The Time of India' dated 25th January, 2007, but no public person filed any objection to the grant of Letter of Administration in favour of respondent no.2. Valuation report in respect of immovable properties in question were called from the concerned authorities which were submitted by the Tehsildar, Sadar Bazar, New Delhi in respect of Shastri Nagar property and by the Sub Divisional Magistrate, Narela (Delhi) in respect of Transport Nagar property.

9. Following issues were framed by the trial court :-

1. Whether the Will dated 31.07.2003 of Sh. Bali Singh is proper and valid? OPP
2. Whether the Will dated 31.07.2003 of Sh. Bali Singh is his last Will? OPP
3. Whether the Will dated 31.07.2003 of Sh. Bali Singh is forged and fabricated? OPR-2 & 4.
4. Whether the petitioner is entitled to the grant of probate/letter of administration in respect of the Will dated 31.07.2003 of Sh. Bali Singh? OPP
5. Relief.

10. Respondent no.2 examined himself as PW1. He also examined one of the attesting witnesses to the Will, namely, Shri Balvinder Singh as PW2. Shri Om Prakash, LDC from the Office of Sub Registrar, Pitampura was examined as PW3. PW1 was cross-examined by the counsel for respondent nos. 2 and 4. However, PW2 and PW3 were not cross-examined by the respondent no.2 and 4 despite several opportunities granted to them. Testimonies of PW2 and PW3 have, thus, remained unchallenged. Appellant examined himself as RW-2. Respondent nos. 2 and 4 also examined one Shri Prem Shankar as RW-1.

11. Trial court considered the arguments of counsel for the parties and scrutinised the entire documentary as well as oral evidence on record and

has concluded that respondent no.2 had succeeded in proving the Will dated 31st July, 2003, to be the last Will of Late Shri Bali Singh having been executed by him in full disposing mind, in presence of two attesting witnesses. Trial court has further concluded that from the statements of PW2 and PW3 it was clear that Will dated 31st July, 2003 (Ex.PW1/2) of deceased-Bali Singh was duly proved in accordance with law by the respondent no.2. Appellant and respondent no. 4 had alleged that Will was forged and fabricated by the respondent no.2 but they had failed to lead any evidence to prove the said defence. On the contrary, in view of the testimonies of PW2 and PW3 respondent no. 2 had succeeded in proving that Will dated 31st July, 2003, was the last genuine and valid Will of Late Shri Bali Singh.

12. I have heard the learned counsel for the parties and have perused the record. Section 63 (c) of the Indian Succession Act, 1925 (for short, hereinafter referred to as the 'Act') envisages that the Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or the

signature of such other person; and each of the witnesses shall sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary. Section 68 of the Indian Evidence Act, 1872 provides that if a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least 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.

13. In this case, a perusal of Will (Ex. PW1/2) makes it clear that the same has been duly executed in presence of two witnesses, namely, Shri Inderjeet Singh and Shri Balvinder Singh (PW2) in the office of Sub Registrar. PW2 has categorically deposed in his affidavit that he personally knew Late Shri Bali Singh. On 31st July, 2003, he was called by Shri Bali Singh at Sub Registrar's Office at Pitampura to witness the Will that was made by him. He reached Sub Registrar's Office. Will was executed by Shri Bali Singh in his presence which was witnessed by him. He has identified his signatures on Ex. PW1/2. He also identified the thumb impression of Late Shri Bali Singh on each page of the Will. He categorically deposed that Late Shri Bali Singh affixed his thumb impression on each page in his

presence. He further deposed that after Testator had put his thumb impression Will was signed by Shri Indejeet Singh and thereafter it was signed by him as a witness. He has also identified the signatures of Shri Inderjeet Singh on the Will. He has categorically deposed that Testator was in full disposing state of mind at the time of execution of Will. His deposition has remained unchallenged as he was not cross-examined by the counsel for respondent nos. 2 to 4. There is no reason to disbelieve the unchallenged testimony of PW2. Unchallenged testimony of PW2 meets the requirement as contained in Section 63(c) of the Act. Testimony of PW2 in no uncertain terms makes it clear that Testator had executed the Will in presence of two attesting witnesses, inasmuch as, Will was registered in the office of Sub Registrar in presence of the Testator and the witnesses to the Will, namely, Shri Inderjeet Singh and Shri Balvinder Singh. Accordingly, respondent no.2 has succeeded in proving the Will and finding of trial court to this effect cannot be found faulted with.

14. Respondent nos. 2 and 4 have taken a plea in their reply that Will was a forged and fabricated document, however, their bald statement in this regard is not sufficient to prove that the Will is a forged document in absence of any other cogent evidence. Plea taken by them has remained

unproved. Respondent nos. 2 and 4 have also stated in their reply that thumb impressions appearing on the Will dated 31st July, 2003 are different than the thumb impressions appearing on the earlier Will dated 13th June, 2003, but no evidence has been led by the appellant and respondent no. 4 before the trial court to substantiate this plea. Opinion of hand writing expert was not obtained nor any expert opinion was placed and proved on record. Accordingly, this bald plea has rightly not been accepted by the trial court.

15. Learned counsel for the appellant has vehemently contended that the Will is shrouded with suspicion. He has contended that in view of the earlier Will dated 13th June, 2003 there was no necessity for execution of another Will by Late Shri Bali Singh on 31st July, 2003. It has been further contended that Late Shri Bali Singh was unwell and bed ridden and was not in a position to execute any Will on 31st July, 2003. PW1 Prem Shanker has deposed that he saw Shri Bali Singh being taken to Sub Registrar's Office at Pitampura by respondent nos. 2 and 3 on 31st July, 2003 for some work and at that time Shri Bali Singh was neither conscious nor in a proper state of mind as he was on death bed for about one month. First of all, his this statement cannot be accepted being beyond pleadings as no such plea was taken in the reply by the appellant and respondent no. 4. Secondly, this plea

has remained uncorroborated by any documentary evidence on record. Appellant and respondent no. 4 have not produced any documentary evidence to show that Late Shri Bali Singh was ailing and bed ridden, inasmuch as, it has not been disclosed as to what kind of ailment he was suffering from. All these pleas appear to have been taken as an afterthought in the evidence and cannot be accepted. On the contrary, statement of PW1 supports the version of respondent no.2 that Late Shri Bali Singh executed the Will dated 31st July, 2003 and got it registered with the Sub Registrar. The Will otherwise is not unreasonable in the sense that even appellant has been given equal right vis-a-vis respondent nos. 2 and 3 in the Shastri Nagar property. As regards property at Transport Nagar is concerned, it has been given to respondent nos. 2 and 3 in equal proportions but at the same time a duty has been cast upon them to either pay ₹4 lacs to appellant or to buy a property of 55 sq. meter in Transport Nagar from their own funds in the name and for the benefit of appellant. It is not the case that appellant has been completely debarred from inheritance. In my view, Will is not shrouded with suspicion.

16. Learned counsel for the appellant has next contended that probate petition was filed beyond a period of three years from the date of death of

Testator, thus, is barred by limitation. It is contended that in case of grant of Letter of Administration Article 137 of the Limitation Act, 1963 is applicable according to which a petition has to be filed within a period of three years. Reliance has been placed on Krishna Kumar Sharma vs. Rajesh Kumar Sharma AIR 2009 SC 3247. I do not find any force in this contention. Article 137 of the Limitation Act provides that any other application for which no period of limitation is provided elsewhere in this division the period of limitation is three years from the date when “right to apply accrues”. No period of limitation has been prescribed for filing a probate/letter of administration petition under the Limitation Act. Accordingly, Article 137 of the Limitation Act is attracted with regard to probate petitions. A perusal of Article 137 makes it clear that period of limitation will commence from the date ‘right to apply’ accrues in favour of petitioner. The period of limitation will not commence from the date of death of Testator; more so when in National Capital Territory of Delhi there is no law which compels the applicant to file the proceedings of probate or Letter of Administration.

17. I am also of the view that limitation for filing the probate or Letter of Administration of a Will will not commence from the date of death of the

Testator but will commence from the date when 'right to apply' accrues. Appellant filed a suit for declaration against respondent nos. 2 and 3 on 17th August, 2006 praying therein that Will dated 31st July, 2013 be declared as null and void meaning thereby that the Will was objected to by the appellant and which challenge gave rise to a right in favour of respondent no.2 to apply for grant of Letter of Administration. Within a period of three months from the date of filing of suit by the appellant present petition for Letter of Administration was filed by the respondent no.2, thus, it is not barred by time.

18. In the light of above discussions, appeal is dismissed being devoid of merits.

A.K. PATHAK, J.

OCTOBER 14, 2014

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