

\$~14

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

+ TEST.CAS. 19/2012

Y.K. GUPTA

..... Petitioner

Through: Mr. Ashim Vachher and Mr. Vaibhav
Dabas, Advs.

versus

STATE & OTHERS

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **05.08.2019**

1. The present petition has been filed by the Petitioner seeking letters of administration in respect of the estate of late Sh. A. N. Gupta, who passed away on 12th March, 2012 leaving behind Petitioner and Respondents No.2, 3 and 4 as his legal heirs. The estate of the deceased includes the following movable and immovable properties:

Immovable Property:-

(i) Property bearing No.B-28/G-4, Block - B, Dilshad Garden, Delhi and

Movable Properties:-

(i) Savings Bank Account No.3927000100039879 in the name of Late Shri A.N. Gupta with Punjab National Bank, B-Block, Dilshad Garden, Delhi having the balance as per the Passbook is to the tune of Rs. 18,109.85.

(ii) Savings Bank Account No. 10172644423 in the name of Late Shri A.N. Gupta with State Bank of India, B-Block, Dilshad Garden, Delhi which is having the balance as per the Passbook is to the tune of Rs.5081.66.

(iii) Savings Bank Account No.2686101011443 in the name of Late Shri A.N. Gupta with Canara Bank, B-Block, Dilshad Garden, Delhi which is

having the balance as per the Passbook is to the tune of Rs.18,887.00.

(iv) Savings Bank Account No.2912 in the name of Late Shri A.N. Gupta with Vaish Cooperative Adarsh Bank, Karol Bagh, Delhi which is having the balance as per the Passbook, is to the tune of Rs. 1,20,164.40.

(v) Savings Bank Account No. 17264 in the name of Late Shri A.N. Gupta with United Bank of India, President's Estate, Rashtrapati Bhawan, New Delhi which is having the balance as per the Passbook is to the tune of Rs.14,214.47.

(vi) Various FDRs in the name of Late Shri A.N. Gupta with different Banks at Delhi wherein Late Shri A.N. Gupta had nominated his three sons, namely. Petitioner herein and the Respondent Nos.2 and 3, as nominees.

2. It is the case of the Petitioner that Late Sh. A. N. Gupta died intestate and has not executed any Will prior to his demise in favour of either the Petitioner or the Respondents or any other person and hence, the entire above mentioned assets including the above mentioned immovable and movable assets devolved in equal proportion in favour of the Petitioner and the Respondents.

3. It is the submission of the Petitioner that all the FDRs and Locker Keys, which were held by Late Shri A.N. Gupta in his name are in custody of the Respondent No.2, the elder brother of the Petitioner. After the demise of Late Shri A.N. Gupta, the Petitioner requested his elder brother, the Respondent No.2 that all the assets of Late Shri A.N. Gupta, on account of the fact that he had died intestate ought to be divided equally among all the legal heirs of Late Shri A.N. Gupta. However, the Respondent No.2 with

malafide intention refused to part with the possession of the various FDRs and Locker Keys and also refused division of the assets of Late Shri A.N. Gupta equally amongst all the legal heirs. In fact, the Respondent No.2 and the Respondent No. 3 threatened that he would, in collusion with the various Bank officials encash the various FDRs, the Kisan Vikas Patras, the National Saving Certificates and the money lying in various bank accounts of Late Shri A.N. Gupta and would appropriate the same for his benefit. Left with no other alternative, the Petitioner immediately wrote various letters to the various post offices as well as the banks where the bank accounts and the FDRs of Late Shri A.N. Gupta are existing with a request that payment towards the same may be stopped forthwith.

4. It is further contended that despite the Petitioner having written stop payment letters to the various Post Offices and the Banks as well as the letters intimating to the concerned Banks not to allow any of the legal heirs of Late Shri A.N. Gupta to operate the lockers, the Respondent No.2 is still threatening to appropriate not only the money lying in the various FDRs and bank accounts but also is threatening to open the lockers and appropriate all the assets lying intestate in the lockers. Further, the Respondent No.2 is threatening that he would dispose of the immovable property owned by Late Shri A.N. Gupta being property No.28/G-4, Block - B, Dilshad Garden, Delhi. It is the apprehension of the Petitioner that without having any authority under law or any right, the Respondent No.2 in collusion with the other Respondents would appropriate the amount and funds of Late Shri A.N. Gupta lying in various FDRs and bank accounts as detailed hereinabove and also other immovable and movable assets, as detailed

hereinabove for their own benefit and to the detriment of the Petitioner.

5. It is further contended that the value of both the immovable and the movable assets of Late Shri A.N. Gupta as mentioned hereinabove is to the tune of Rs. 1,19,23,536.76 (Rupees One Crore Nineteen Lakh Twenty Three Thousand Five Hundred Thirty Six and Seventy Six Paise only) to the best of the Petitioner's knowledge and account of which is given in **Schedule - A** Cannexed herewith the present petition). In case, there are any other intestate assets left by the deceased. Late Shri A.N. Gupta, anywhere either in India or abroad, which come to the knowledge of the Petitioner or brought to the notice of this Hon'ble Court by any other party, the Petitioner submits that the Letter of Administration may also be granted in favour of the Petitioner in respect thereof.

6. Respondent Nos. 3 and 4 have filed their reply and supported the petition. However, the Respondent No.2 has contested the same and in its reply alleged that *“the late Sh. A. N. Gupta may has executed a Will which may be in the locker which is in possession of Petitioner. Unless the locker in possession of petitioner is allowed to be opened the mystery regarding will would remain”*.

7. On 17th December, 2013, on the basis of the pleadings between the parties, the Respondent No.2 persuaded the Court to have a local commissioner appointed for the purpose of opening the locker of late sh. A. N. Gupta. The said order reads as under;

“Despite pass over, none has appeared for respondent no.2,

who is the only person contesting the present petition. This petition has been preferred to seek letters of administration in respect of the assets left by the father of the petitioner and respondent nos.2 to 4. Respondent no.2 in his reply has stated that the late father Sh. A.N. Gupta may have left a will in one of his two lockers.

Learned counsel for the petitioner submits that he has no access to the lockers and he has not opened the said lockers. Similar statement is made on behalf of respondent no.3.

In my view, it would be appropriate that the following lockers of late Sh. A.N. Gupta are got opened and the contents thereof be inventorised:

S.I. No.	Locker No.	Key No.	Bank	Branch
1.	547	17	Allahabad Bank	Krishna Nagar, Delhi
2.	385-304	360	Vaish Coop Adarsh Bank	Karol Bagh, New Delhi

If any will of the deceased is found in the said lockers, the same shall be filed in this court. For this purpose, I appoint Mr. Qm Prakash, Advocate (Mobile No.9810794902) as the Local Commissioner, who shall approach the banks aforesaid to open the lockers detailed above. The petitioner and the respondents shall also be entitled to accompany the Local Commissioner.

The Branch Manager of the concerned banks are directed to grant access to the said lockers to the Local Commissioner. The Local Commissioner shall make an inventory of the contents found in the lockers and shall also be entitled to take photographs. If any 'Will' of the deceased Sh. A.N. Gupta is found in the locker, the same shall be taken out and be filed in a sealed cover in this court in original. The remaining contents of the lockers shall be placed back in the same lockers, or other lockers -provided by the banks. The lockers shall not be allowed to be accessed without prior orders of the court. The petitioner, respondent nos.2 and 3 shall equally bear the charges

incurred for breaking the lockers, if required, and for providing fresh locking mechanism, and for arranging another locker. The customer keys of the lockers shall be retained by the local commissioner after the aforesaid exercise is earned out and shall be filed in this court along with his report.

The Local Commissioner shall fix the date and time for his visit to the banks after prior intimation to the said banks and the parties.

The fees of the Local Commissioner is fixed at Rs.40,000/- apart from all other out of pocket expenses, to be shared by the petitioner and respondent nos.2 and 3 equally. However, in case one or more of the parties does not pay their share of fees/expenses/charges of the Local Commissioner or the banks, the petitioner shall make the payment subject to adjustment.

To await the report of the Local Commissioner, adjourned to 25.03.2014. Dasti.

A copy of this order be communicated to the aforesaid banks by the registry for compliance.”

8. The Local Commissioner carried out the directions of the Court and in para – 4 of his report stated that he did not find any Will of Sh. A. N. Gupta or any other document in the two lockers which were directed to be opened vide order dated 17th December, 2013.

9. On 1st February, 2017, on the basis of this plea raised in his reply, the following issues were framed:

“i. Whether the petitioner is entitled to Letters of Administration in respect of the assets of late AN Gupta and, if so, in respect of which assets? OPP.

ii. Relief.”

10. The Petitioner thereafter examined Sh. Shiv Mohan, purported *purohit*

of the Petitioner who deposed to the following effect:

“5. I say that Late Shri A.N. Gupta died intestate without leaving any Will and has left behind movable and immovable properties. After the death of late Shri A.N. Gupta family disputes with respect to the assets, both immovable and movable of Late Shri. A.N. Gupta ensued among with Legal heirs. After much persuasions and arguments, an inventory was prepared regarding the assets of the Late. Shri A.N. Gupta which are detailed in **SCHEDULE-A** already attached along with the Petition by the Petitioner. I know all these as I was present there throughout along with the Petitioner.

6. I say that when the intentions of the brothers of the Petitioner turned dishonest and they refused to partition the movable and immovable properties of Late Shri. A.N. Gupta, as detailed in Schedule-A, the Petitioner wrote various letters to the Manager of Jhilmil Colony post Office, Delhi dated 16.03.2012, the Manager of GPO, Kashmiri Gate, Delhi dated 16.03.2012, the Manager of Dilshad Garden Post Office, Delhi dated 16.03.2012 the Manager of Vaish co-operation Bank Ltd., Karol Bagh, Delhi dated 16.03.2012, the Manager of Allahabad Bank, Krishan Nagar, Delhi dated 16.03.2012, the Manager of PNB, Block-B, Dilshad Garden, Delhi dated 16.03.2012, the Manager of Canara Bank, Dilshad Garden, Delhi dated 16.03.2012, the Manager of SBI, Block-B, Dilshad Garden Delhi dated 16.03.2012, the Manager of United Bank of India, President's Secretariat, Rashtrapati Bhavan, New Delhi 16.03.2012, thereby requesting all of them to stop payment of the DDPs/FDRs/MIS/KVPs/NSCs lying in the name of Late Sh. A.N.Gupta. I went with the Petitioner to the Banks and Post Offices to hand over these letters. The copies of these letters written by the Petitioner all dated 16.03.2012 are already marked as EXHIBIT CW -111, EXHIBIT CW -112, EXHIBIT CW-113, EXHIBIT CW-114, EXHIBIT CW-115 , EXHIBIT CW-116, EXHIBIT CW-117, EXHIBIT CW-118 and EXHIBIT CW-119 respectively.

7. I say that besides the abovementioned movable and immovable properties of Late Shri. A.N. Gupta, who expired on 12.03.2012, he also has left two Lockers in different Banks,

namely Allahabad Bank, Krishna Nagar, Delhi and Vaish Coop. Adarsh Bank, Karol Bagh, New Delhi. The contents and assets including their valuations would be to the tune of Rupees more than Fifteen Lakhs.

8. I say that Late Shri A.N. Gupta has also purchased various Kisan Vikas Patras, National Saving Certificates and having Monthly Savings Scheme as well. The valuation of the Kisan Vikas Patras and National Saving Certificates would be to the tune of Rs. 1,50,0001-. Having these Kisan Vikas Patras and National Saving Certificates etc. and the original Title Deed of - the immovable property are in possession of the Respondent No.1, who refused to part with the possession of these Kishan Vikas Patras and National Saving Certificates and the Original Title Deed of the immovable property of Late Shri. A.N. Gupta, after the Death of Late Shri. A.N.Gupta.

9. That Late Shri A.N. Gupta, who expired on 12.03.2012, has left behind no other legal heirs except the Petitioner and the Respondent Nos. 2, 3 & 4.

10. I say that Late Shri. A.N. Gupta was residing in the property bearing No. at B-28/G-4, Block-B, Dilshad Garden, Delhi alone before his demise. After the demise of Late Shri A.N. Gupta the said immovable property as well as all the moveable assets came in joint and constructive possession of all the legal heirs.

11. I say that the FDRs and Locker Keys including Kisan Vikas Patras and National Saving Certificates and the original Title Deeds of the immovable property and documents of Monthly Saving Scheme, which were held by Late Shri A.N. Gupta in his name are in custody of the Respondent No.2, the elder brother of the Petitioner. After the demise of Late Shri. A.N. Gupta, the Petitioner requested his elder brother, the Respondents No.2 that all the assets of Late Shri. A.N. Gupta, on account of the fact that he had died intestate ought to be divided equally among all the legal heirs of Late Shri. A.N. Gupta. However, the Respondent No.2 with malafide intentions refused to part with the possession of the various FDRs, Locker Keys, Monthly Income Scheme, Kishan Vikas Patras and National Saving Certificates and also refused the partition of the assets of Late Shri. A.N. Gupta, both movable and immovable properties, equally amongst all the legal

heirs. In fact, the Respondent No.2 threatened that he would, in collusion with the various Bank Officials; en-cash the various FDRs, the Kisan Vikas Patras, the National Saving Certificates and the money lying in various bank accounts of Late Shri A.N. Gupta and would appropriate the same for his benefits. Left with no other alternative, the Petitioner immediately wrote various letters to the various post offices as well as the banks where the bank accounts and the FDRs of Late Shri A.N. Gupta are existing with a request that payment towards the same may be stopped forthwith. Also letters were issued to the concerned banks where Late Shri A.N. Gupta had his lockers so that none of the Respondents could operate the lockers held by Late Shri. A.N. Gupta.

12. I say that despite the Petitioner having written stop payment letters to the various Post Offices and the Banks as well as the letters intimating to the concerned Banks not to allow any of the legal heirs of Late Shri A.N. Gupta to operate the lockers, the Respondent No.2 is still threatening to appropriate the money lying in the various FDRs and bank accounts. Further, the Respondent No.2 in collusion with other Respondents is threatening that he would dispose off the immovable property owned by late Shri A.N. Gupta being property No.28/G-4, Block-B, Dilshad Garden, Delhi.

13. I say that the Respondent No.2, being the elder brother of the Petitioner, is perpetuating himself as the Karta of Family with the sole motive of committing fraud and depriving the Petitioner of his rightful share in the movable and immovable assets of Late Shri A.N. Gupta.

14. I say that the FDRs including all the FDRs, Kisan Vikas Patra, Monthly Income Scheme and National Saving Certificate etc. as well as the Original Title Deed of the said immovable property are in custody of the Respondent No.2 and despite calling upon the Respondent No.2 repeatedly, the Respondent No.2 has not produced the original of the same before the Petitioner as well as other Respondents.”

The aforesaid witness has not been cross examined and the testimony has

gone un rebutted.

11. In view of the aforesaid, since there is no contest in the petition, Petitioner has successfully discharged the onus of proof with the respect to the issue framed by this Court. The Court has no hesitation to allow the present petition.

12. Accordingly, in light of no objection by Respondents no. 2 and 3, subject to the Petitioner depositing in this Court the requisite stamp duty and subject to the Petitioner filing administration bond with one surety for the value of the estate, Letters of Administration of the estate of Late Sh. A. N. Gupta comprising of the properties (movable and immovable) as mentioned in para 1 above (informed to be of the value INR 1,19,23,536.76 (Rupees One Crore Nineteen Lakh Twenty Three Thousand Five Hundred Thirty Six and Seventy Six Paise only) as per knowledge of Petitioner), be issued to the Petitioner.

13. Accordingly, the petition is disposed of in the above terms.

SANJEEV NARULA, J

AUGUST 05, 2019

Pallavi