

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

+ **Test. Cas. No.15/2013 & CS(OS) No.2558/2012**

% **2nd May, 2016**

+ **TEST. CAS. No.15/2013**

SHRI SUDHIR VIJH Petitioner

Through: Ms. Amrit Kaur Oberoi, Advocate.

versus

THE STATE & ANR. Respondents

Through: Mr. N.S.Arora, Adv. for R-1.

+ **CS(OS) No.2558/2012**

SHALINI VIJH @ SHALU CHUGH Plaintiff

Through:

versus

SUDHIR VIJH Defendant

Through: Ms.Amrit Kumar Oberoi, Adv.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

TEST. CAS. No.15/2013

1. This testamentary case is filed by the petitioner/Sh. Sudhir Vijh for probate/letters of administration with the Will annexed, of his father late Sh. Atam Prakash Vijh. Sh. Atam Prakash Vijh died leaving behind his last Will

dated 02.07.1997. Respondent no.2 in the probate petition is the sister of the petitioner and the daughter of Sh. Atam Prakash Vijn.

2. Counsel for the petitioner makes an oral prayer, and which is accepted, that, the testamentary case be not only decided as per the last Will of Sh. Atam Prakash Vijn dated 02.07.1997 but also the earlier Will dated 03.06.1997.

3. The issue in the present case is whether the petitioner has been able to successfully prove the due execution and attestation of the Wills dated 02.07.1997 and 03.06.1997 of late Sh. Atam Prakash Vijn.

4. I may note that it is only the petitioner who has led evidence in this case. No evidence has been led on behalf of the objector/respondent no.2.

5. Petitioner has led evidence of one attesting witness namely Sh. M.L. Sharma. Sh. M.L. Sharma has filed his affidavit by way of evidence dated 17.05.2014. Sh. M.L. Sharma has deposed with respect to the due execution and attestation of the Wills dated 02.07.1997 and 03.06.1997. He has deposed that the attesting witnesses signed the Will in the presence of the testator and the testator signed in the presence of the attesting witnesses as regards both the Wills. The attesting witness has also deposed that the testator was in sound disposing mind at the time of executing both the Wills.

6. Both the Wills were presented for registration before the Sub-Registrar and this aspect of registration has been proved by summoning the concerned person from the office of the Sub-Registrar on 03.06.2015. The Will dated 03.06.1997 is registered on 03.06.1997 at Serial no.34699 in Additional Book no.3, Volume no.3866 at Page no.100 and the Will dated 02.07.1997 has been registered on 02.07.1997 at Serial no.41206, in Additional Book no.3, Volume no.3900 at Page no.20.

7. In view of the above, the petitioner has succeeded in proving the Wills, dated 02.07.1997 as Ex.PW1/2, and dated 03.06.1997 as Ex.PW1/1. Though, there is some confusion in the language of the Will dated 02.07.1997, but when this Will is read as a whole, more so on account of the fact that there is also an earlier Will dated 03.06.1997 of late Sh. Atam Prakash Vijh, it is the petitioner who is the sole beneficiary under the Wills Ex.PW1/1 and Ex. PW1/2 of late Sh. Atam Prakash Vijh.

8. Testamentary case is, therefore, allowed and the petitioner is granted probate of the Wills dated 03.06.1997 Ex.PW1/1 and 02.07.1997 Ex.PW1/2 of late Sh. Atam Prakash Vijh. Since the petitioner is the sole beneficiary under the Wills, petitioner is hence exempted from filing of the Administration Bond and the Surety Bond. Probate will be granted to the petitioner on the petitioner filing the court fee and on compliance of the other administrative formalities as required.

9. Parties are left to bear their own costs.

CS(OS) No.2558/2012

1. Sh. Sudhir Vijn/petitioner in Test. Cas. No.15/2013 is the defendant in this suit, and the plaintiff in this suit Smt. Shalini Vijn (the sister of Sh. Sudhir Vijn) is the respondent no.2 in the testamentary case.

2. The defence of the defendant Sh. Sudhir Vijn in the present suit was that the father died leaving behind the Wills dated 03.06.1997 and 02.07.1997, and therefore, the plaintiff Smt. Shalini Vijn is not entitled to partition of the suit property no.173C, DDA Flats, MIG, Second Floor, Block-G8, Rajori Garden, New Delhi.

3. The present suit and the Test. Cas. No.15/2013 were consolidated vide Order dated 30.07.2014.

4. Accordingly, since Sh. Sudhir Vijn has successfully proved the Wills of late Sh. Atam Prakash Vijn dated 03.06.1997 and 02.07.1997 in the Test. Cas. No.15/2013, the Wills are taken to be proved in this suit also resulting in the defendant in the present suit Sh. Sudhir Vijn becoming the sole owner of the suit property as the same has been bequeathed to him by his father late Sh. Atam Prakash Vijn as per the Wills dated 03.06.1997 proved as Ex.PW1/1 and 02.07.1997 as Ex.PW1/2 in Test. Cas. No.15/2013. The subject suit for partition is therefore dismissed.

5. Parties are left to bear their own costs.

MAY 02, 2016
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VALMIKI J. MEHTA, J.

