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

Judgment reserved on May 17, 2016
Judgment delivered on July 12, 2016

\+ TEST.CAS. 108/2014

RAJESH SONDHI & ANOTHER ..... Petitioners
Through: Mr. S.C. Anand, Adv.

versus

STATE & ANOTHER ..... Respondents
Through: Mr. Kunal Anand, Adv. / Proxy Counsel for Ms. Khushboo Sahu, Adv.

CORAM:
HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

TEST.CAS. 108/2014

1. This is a petition under Sections 276 and 290 of the Indian Succession Act, for grant of Letters of Administration with Will dated 13th October, 1988 of Late Shri Gurdial Singh Panesar in favour of petitioner no.1 subject to payment of Court Fees in respect of property at Village Bissaula as shown in the list of properties at Annexure P-5, even though in the prayer clause it has been stated that the question of lease hold property at Delhi Cantt, may be left open for future as the petitioners are not entitled to it.

2. It is suffice to state that the statement was made by petitioner no. 1 during his evidence that the Will dated 13th October, 1988 (Exh.PW1/1) does not cover the property situated at Delhi Cantt and he is not claiming any right or share in the property.

3. The case set up by the petitioner no.1 in the petition is that petitioner is a Citizen of India and is a permanent resident of Delhi and managing agricultural farming at Village-Bissaula Pargana, Hastinapur, Tehsil Mawana, District-Meerut (UP). The petitioner no.2 is a HUF, which has been made a party only on the ground that the substantial payments have been made from the HUF to Late Shri Gurdial Singh Panesar in relation to subject property for which Letters of Administration are sought.

4. According to the petitioner, the instant petition pertains to the Estate of Late Shri Gurdial Singh Panesar, who was a permanent resident of III-4/53, Shastri Bazar, Delhi Cantt. In so far as property at Village Bissaula, District Meerut, Uttar Pradesh is concerned, it is the case of the petitioner no.1 that even after confiscation of more than 20 Bighas of his land under the UP Zamindari Abolition of Land Reforms Act, late Shri Gurdial Singh Panesar still owned 60 Bighas 2 Biswas and 15 Biswansis of agricultural land in Khasra Nos. 2/9, 6, 12, 15, 19, 41 and 316 in

Village Bissaula, Pargana, Hastinapur, Tehsil Mawana, District Meerut, Uttar Pradesh since 1950 as "Snakramniya Bhumidhar" with transferrable rights. He left behind a Will dated 13th October, 1988, in which he bequeathed the land to the petitioner no.1. Sh. Gurdial Singh Panesar died on 18th April, 1991. His original death certificate is placed on record. The notice on the petition was issued by this Court to the State and the Chief Revenue Controlling Officer with a direction to file Valuation Report. Citation was also issued in The Statesman, Delhi Edition and Dainik Jagran, which has a circulation in Uttar Pradesh. The Citations issued in the aforesaid Newspapers have been placed on record. The Valuation Report dated 11th December, 2015 has been filed by the concerned authority, which is placed on record.

5. Respondent no. 2 who is the son of Late Sh. Gurdial Singh Panesar has filed objections to the Petition wherein he has stated that the Will dated 13th October, 1988 relied upon by the petitioner no. 1 covers the property at Village Bissaula, District Meerut, Uttar Pradesh and does not cover the property at Delhi Cantt. In so far as the Will dated 13th October, 1988 is concerned, the answering respondent no. 2 has stated that he has no reason to dispute the signature of his father as it appears to be ex-facie correct. He has also stated that he does not have any reason

to dispute the signature of Sh. Trilok Singh, witness no.1 of the Will as the same also appears to be ex-facie correct. In so far as the other witnesses are concerned, he has stated that he is not aware of the other two witnesses, being witnesses Nos. 2 and 3 of the said Will. He does not admit their signatures or due witnessing by them. According to him if the Will dated 13th October, 1988 is not duly proved by the petitioner, then the said property at Village Bissaula will naturally devolve on the answering respondent no. 2 and his relations.

6. The petitioner no. 1 has filed the affidavits of attesting witness being PW-2 Sardar Gagan Deep Singh, witness at serial no.2 of the Will dated 13th October, 1988 and PW-3 Rajesh Gupta witness at serial no.3 of the Will dated 13th October, 1988 as Annexures. The petitioner no.1 has also filed his evidence by way of affidavit Ex.PW1/A, wherein he reiterates the contents of the petition and exhibited the Will dated 13th October, 1988 as Ex.PW1/1, original Death Certificate of Late Sh. Gurdial Singh Panesar as Ex.PW1/2, the affidavits of the two witnesses of the Will dated 13th October, 1988 as PW1/3 and PW1/4. According to him, the witness no.1 of the Will, Shri Trilok Singh is dead. Petitioner no.1 also states that he and his HUF made substantial payments to Late Sh. Gurdial Singh Panesar and he had also executed Power of Attorney

and Agreement to Sell in his favour in addition to the said Will in respect of the said land at Village Bissaula, District Meerut, UP and he is in possession thereof since 1978. He also states that during the lifetime of the Testator of the Will, Late Sh. Gurdial Singh Panesar by utilizing his Power of Attorney, he had sold 1 bigha 1 biswa and 14 biswanis of land by Registered Sale Deed, which is entered in the Revenue Records in the name of the concerned purchaser. Therefore, 59 bighas, 1 biswa and 1 biswani was left in the share of the Testator in the Village Bissaula. He further states that during the lifetime of the Testator of the Will, late Sh. Gurdial Singh Panesar, by utilizing his Power of Attorney, he had also sold 3 bighas 4 biswas by registered sale deed, which is not yet entered in the Revenue Records in the name of the concerned purchaser. Thereafter, 55 bighas, 17 biswas and 1 biswani of land was left in the share of the Testator in the Village Bissaula. Petitioner no. 1 also states in his affidavit that delay has occurred in the instant case as he has learnt about the death of the Testator at a very late stage and the Will and the other relevant papers which had been kept in the safe custody of his wife were not readily traceable and happened to be discovered only after her death. He has also stated that the list of properties of late Sh. Gurdial Singh Panesar is annexed as Ex. PW1/5. It may be stated here, that in terms of the Will dated 13th October, 1988 (Ex.PW1/1), the testator has bequeathed, the land with Khasra Nos. 2/9, 6, 12, 15, 19, 41 and 316 stating to be measuring approx 54 bighas, whereas as per Ex.PW1/5, the land (at serial no.2) comprising of the Khasras 2/9, 6, 12, 15, 19, 41 and 316 is shown to be 55 bighas 17 biswas 1 biswansi. In other words, the Letters of Administration is also being prayed for the extra land measuring 1 bigha 17 biswas 1 biswani.

7. The statement of the petitioner no.1 was recorded on SA. He tendered his evidence by way of affidavit Ex.PW1/A, wherein he relied upon the Will dated 13th October, 1988 as Ex.PW1/1 and original death Certificate of Late Shri Gurdial Singh Panesar as PW1/2, affidavits of witness No.2 and witness No.3 of the Will dated 13th October, 1988 as exhibits PW1/3 and PW1/4 and also list of properties Ex.PW1/5. He was cross-examined by the counsel for the respondent no.2. The witness at serial no.2 of the Will dated 13th October, 1988Ex.PW1/1, PW2 Sardar Gagan Deep Singh, son of Late Sardar Niranjan Singh also tendered his affidavit Ex.PW2/A. He was also cross-examined. Similarly, attesting witness at serial no. 3 of the Will dated 13th October, 1988 Ex.PW1/1, PW-3 Rajesh Gupta, son of Late Shri Suraj Bhan Gupta also tendered his affidavit Ex.PW3/A and was cross-examined by the counsel for the respondent no. 2. Thereafter, statement of counsel for the respondent no.

2 was recorded on 18th January, 2016, wherein she has stated that respondent no.2 does not wish to lead any evidence. On the said statement, which was recorded separately, the evidence of the respondent no. 2 was closed.

8. In so far as the issue of jurisdiction is concerned, Mr. S.C. Anand, learned counsel for the petitioner no. 1 would submit that specific averments have been made in Para 3 of the petition that Late Sh. Gurdial Singh Panesar was a permanent resident of III-4/53, Shastri Bazar, Delhi Cantt. The Will dated 13th October, 1988 (Ex.PW1/1) has been executed at Delhi as is clear from the attestation made by the Notary at Delhi. That part, attesting witnesses PW2 and PW3 have deposed that the Will was signed by them at the residence of the testator and the petitioner no.1, beneficiary, is a resident of Delhi. He would rely upon the judgment of this Court in the case of ***Karamjit Jaiswal v. Investee Trust (Jersy) Limited and Ors. 180 (2011) DLT 15*** wherein this Court has held that where the Wills have been executed at Delhi by the deceased, who had the residence within the jurisdiction of this Court and the beneficiary of the Will is also a residence of the Delhi, this Court would have the jurisdiction. It is also submitted by Mr. Anand that petitioner no.1 being a single beneficiary, the requirement of

Administration Bond and Surety Bond under Section 291 and Exhibition of Inventory of Account under Section 317 are superfluous in his case and need not be imposed. He would rely upon the order of this Court dated 11th March, 2014 passed in ***Testimonial Case No. 4/2012, Ursula Lulse Broexkes-De v. State*** which in turn refers to the Judgment of this Court in the case of ***Sanjay Suri v. State 3003 (71) DRJ 446 and Richa Pardeshi v. State 2012 (131) DRJ 92*** to contend that the petitioner in that case, being the sole beneficiary / sole legatee having been exempted from furnishing Administration Bond as mandated under Section 291 of the Act, was exempted from complying with the provisions of Section 317 of the Act.

9. On the other hand, learned counsel for respondent no. 2 states that he has no objection for grant of Letters of Administration as long as the same does not concern the property at Delhi Cantt. The counsel concedes to the fact that respondent no. 2 has not led any evidence opposing the grant of Letters of Administration.

10. Having heard the learned counsel for the parties, in so far as the issue of jurisdiction is concerned, it is stated in the petition by the petitioner no.1 that the Testator Late Sh. Gurdial Singh Panesar was a permanent resident of III-4/53, Shastri Bazar, Delhi Cantt. It is also

stated in Para 12 of the petition that he owned the said property on leasehold basis from Delhi Cantonment Board from 1930 till about 2020 AD. It is also stated that the Will dated 13th October, 1988 (Ex.PW1/1) was executed at Delhi.

11. I note on the issue of jurisdiction, this Court in Karamjeet Singh (Supra) has held that the Will has been executed at Delhi, the Testator had a residence within the jurisdiction of this Court and the plaintiff in the said case, who was the sole beneficiary of the Will was the resident of Delhi held that this Court had the jurisdiction. In the present case, no doubt, in the Will dated 13th October, 1988, (Ex.PW1/1) the resident of the Testator was shown to be at Chandigarh, however, specific averments have been made in the petition that the Testator was a permanent resident of III-4/53, Shastri Bazar, Delhi Cantt and the Will (Ex.PW1/1) was executed at Delhi. The said averments have not been contested by the respondent no.2. That apart, the sole beneficiary, i.e., petitioner no. 1 is also a resident of Delhi as is seen from the Petition. Accordingly, this Court has the jurisdiction to entertain the present petition.

12. That in view of the fact, there is no opposition to the present petition and the Will dated October 13, 1988 Ex.PW1/1, is the last and

final Will in respect of the agricultural land of Late Shri Gurdial Singh Panesar, which stands proved and the list of immovable properties of the testator Ex.PW1/5 with regard to property at serial No.2 also stands proved, there is no impediment for grant of Letters of Administration. The Letters of Administration with Will dated October 13, 1988 Ex.PW1/1 of late Gurdial Singh Panesar in respect of property at serial No.2 of the list of properties Ex.PW1/5 is granted in favour of petitioner No.1, on payment of court fees. As the petitioner has relied upon the order of this Court in Testamentary Case No.04/2012 dated March 11, 2014 *Ursula Lulse Broexkes-De v. State* ***(Supra)*** and being a sole beneficiary of the Will dated 13th October, 1988 (Ex.PW1/1), is exempted from furnishing the Administration Bond as mandated under Section 291of the Act, so also complying with the provisions of Section 317 of the Indian Succession Act. The petition is disposed of.

IA 7684/2015
Dismissed as infructuous.

(V.KAMESWAR RAO)
JUDGE

JULY 12, 2016/*jg*