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HIGH COURT OF DELHI AT NEW DELHI

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F.A.O. No.332/2015

Decided on : 23rd February, 2016

ARUN CHOPRA & ANR.

..... Appellants

Through: Ms. Shobhana Takiar, Advocate.

Versus

STATE NCT OF DELHI & ANR

..... Respondents

Through: Mr. Anuj Aggarwal, ASC &
Mr. Shubhanshu Gupta, Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. This is an appeal filed by the appellants against the judgment dated 17.04.2015 by virtue of which the probate petition of the appellants was dismissed.

2. Briefly stated the facts of the case are that the present appellant, Arun Chopra and his wife Sarvjit Chopra, who were the executors of the Will filed a probate petition in respect of the Will dated 25.3.2000 purported to have been made by the father of appellant No.1, Harbans Lal Chopra, who had died on 26.5.2000. In the probate petition, the State was respondent No.1 and Vivek Chopra, the other son of Harbans Lal Chopra, was respondent No.2. It was alleged that Vivek Chopra was a bachelor and he was not in a sound state of mind because of which he

remained unmarried. The court appointed Amrita Chopra as legal guardian and the next friend of respondent No.2 to see his welfare, who was the daughter of the appellants as her interest was not adverse to that of respondent No.2. The probate petition was totally uncontested. The citation was published in the 'Statesman' on 28.2.2014 as well as at prominent places in the Saket court complex inviting the public for joining the proceedings in case any person was interested. The appellant had stated that though the Will was signed by Harbans Lal Chopra and duly attested by two witnesses, namely, S.L. Chopra and P.N. Chopra; however, both the attesting witnesses had died at the time of filing of the probate petition and consequently, the provision of Section 68 of the Evidence Act was not complied with and it was treated as a case under Section 69 of the Evidence Act. The appellants, in support of their case, proved death certificate of Harbans Lal Chopra as exhibit PW 1/3, Will dated 25.3.2000 as exhibit PW 2/B which was marked earlier as A/PW1. Medical treatment and the record of Vivek Chopra, respondent No.2 was exhibit PW 1/4. In addition to this, the evidence was brought on record that so far as Vivek Chopra is concerned, he was suffering from Paranoid Schizophrenia. Sudesh Prabhakar, PW-2 aged about 74 years and cousin of the appellant No.1, Arun Chopra were produced to prove handwriting and signatures of the attesting witnesses as they were dead. She proved her identity card as exhibit PW 2/A. The learned trial court noted the fact that this was a non-contentious probate petition in respect of property No.J-13A measuring 504 square yards of residential colony known as Kailash Colony, Village Zamrud Pur on Lajpat Nagar, Kalkaji Road.

However, the court had not relied upon the testimony of the witnesses produced by the appellants by analyzing the evidence as is suspected that the witness had stated that the Will of the deceased was typed on a typewriter at the residence of Harbans Lal Chopra while as the Will was typed on computer. It is stated that this was established as printout of the Will with a hard copy was proved. This was taken as a suspicious circumstance by the court and the testimony of PW-2 with regard to the proof of the signatures of the attesting witnesses and the testator were not relied upon. It was also stated by the learned ADJ that PW-2 has narrated that she had seen the attesting witnesses writing and signing while as the fact is that she had only seen them writing and signing a cheque book which was not considered sufficient enough by him.

3. Ms. Takiar, the learned counsel for the appellants has challenged the analysis of evidence by the learned probate court by contending that the learned judge has unnecessarily discarded the testimony of the witness PW-2 and raised imaginary suspicion so as not to believe the testimony of PW-2 or other witnesses in proof of grant of probate. It has been contended by her that under the Will, the beneficiary/appellant No.1 and the executor/appellant No.2 are required to take care of respondent No.2/Vivek Chopra, the brother of appellant No.1, who was admittedly not in a sound state of mind because of which he did not marry. It has been contended by him that respondent No.2, Vivek Chopra was duly represented by guardian and a next friend, who had also not filed any objections or raised any doubt. Moreover, respondent No.2 is a bachelor

and not only legally, under the terms of the wishes of his father, but even morally, the appellant No.1 is enjoined to take care of his brother, therefore, there was absolutely no justification of entertaining the imaginary suspicion so as to discard the testimony of the witness.

4. I have carefully considered the submission made by the learned counsel for the appellants and have also gone through the record. I find some merit in the contention of the learned counsel Ms. Takiar that the court has unnecessarily expressed imaginary suspicion with regard to the Will of Harbans Lal Chopra. Merely because, the witness has stated that the Will was typed, does not mean that the Will was actually typed on manual typewriter. The Will is dated 25.3.2000 and the word typing of a Will is a loosely used terminology which is used very frequently and interchangeably with the computer printout. Therefore, attaching such a great significance to the testimony of the witness that she has stated that the Will has been typewritten while as it is a hard copy of a computer printout should not create unnecessary score and a doubt in the testimony of PW-2. The Will is admittedly uncontested from any quarter. Therefore, I feel that the attesting witnesses having died and the only method of proof of Will as enshrined under Section 69 of the Evidence Act, which requirement has been sufficiently and in an ample measure satisfied by PW-2, the appellants deserve the probate to be granted.

5. I, accordingly, set aside the judgment dated 17.4.2015 rejecting the probate petition and grant probate in favour of the appellants, appointing

appellant No.2 as the executor of the Will. It is made clear that the appellants shall also file an undertaking and furnish a surety bond that they shall abide by the terms and conditions prescribed in the Will.

6. With these directions, the appeal stands allowed.

V.K. SHALI, J.

FEBRUARY 23, 2016
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