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

% **Reserved on: 08th November, 2017**
Pronounced on: 17th November, 2017

\+ **TEST.CAS. 54/2012 & IA Nos.14753/2012, 9969/2016**

NIRVAN MAKAN & ANR ..... Petitioners
Through : Ms.Jubeda Begum, Ms.Sana Ansari, Advocates.

versus

STATE ..... Respondent
Through : Mr.Nishant Das, Advocate for respondent no.2.

CORAM:
HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. The petitioner No.1 is a permanent resident of Delhi residing at Munirka Enclave, Opposite Vasant Vihar, New Delh. The petitioner No.2 after marriage is residing at Bangkok and stays with the petitioner No.1 whenever she is in Delhi. The petitioners' aunt (Buaji) Ms.Surinder Makan expired on 17.03.2012 at flat No.124, Munirka Enclave, New Delhi. She was unmarried and governed by the Hindu Succession Act. She was having and in possession of various movable/immovable assets being her self-acquired properties which she had procured from her savings as an employee of the Indian Airlines. The details of the properties are mentioned in para No.3 of this petition. It is alleged that

all these properties were self acquired and deceased was an absolute owner thereof with full power of disposition over such properties.

2. The deceased executed a registered Will dated 15.07.2011 bearing No.3, Book No.44, pages 77-82, volume No.273 in the Court of Sub Registrar, Ghaziabad, Uttar Pradesh which is the last Will and Testament of the deceased and the petitioners are the beneficiates thereunder and are entitled to all the properties since bequeathed to them and hence are claiming the letter of the administration with Will annexed.

3. The petitioners have already filed the valuation affidavit of all her properties and credits which the deceased possessed and which are likely to come in the hands of the petitioners as per the Will dated 15.07.2011. The relatives left at the time of the death of the deceased are stated in para No.11 of the petition being Smt.Manjeet Kaur – her mother; Tajinder Singh and Satpal Singh-brothers of the deceased; and Sh.Amarjeet Singh Khanna – a friend living with her at the time of her demise. It is alleged in the petition that Shri Amarjeet Singh Khanna was already married having a living spouse and children, but was residing with the deceased for considerable time span and since the deceased had no children of her own, thus bequeathed all her self acquired property to the petitioners who all constantly shared love and affection. The deceased also had alias names viz Surinder Makan @ Surinder Khanna @ Surinder Makan Khanna.

4. Shri Tajinder Singh –brother of the deceased had given 'no objection' by way of an affidavit dated 19.09.2012 for grant of letter of administration; similarly Smt.Manjeet Kaur also had given her affidavit

dated 25.09.2012 for grant of letter of administration in favour of the petitioners. However, Satpal Singh and Amarjeet Khanna had filed objections. Respondent No.2/Amarjeet Khanna claims to be the husband of the deceased.

5. This Court vide order dated 12.12.2014 framed the following issues:-

> 1) Whether the petitioners are entitled for letter of administration of the Will dated 15.07.2011 allegedly executed by the deceased Ms.Surinder Makan in favour of the petitioners entitling them to transfer the suit properties of the deceased? OPP
>
> 2) Relief.

6. The petitioner No.1 has examined himself in this Court as PW1 and tendered his affidavit dated 06.04.2015 Ex.PW1/A and relied upon documents Ex.PW1/1 to Ex.PW1/7 as well as the original Will Ex.PW1/8.

7. During his cross-examination by the learned counsel for respondent No.2 various questions were asked on the relationship the respondent No.2 had with the deceased, which to my mind, were totally out of place in a petition like this; and thus, were rightly objected to by the learned counsel for the petitioner. Such questions were totally irrelevant and hence objections are decided against respondent No.2. The questions were also asked qua disputes having arisen between the petitioner and respondent No.2 only after the death of the deceased.

8. The petitioner in his deposition rather reiterated his aunt was fragile and weak during the cancer treatment and that his parents were

looking after her during the time of her illness/disease. The petitioner also deposed about withdrawal of a sum of ₹ 2.24 Crore from the account of the deceased by the respondent No.2 on 23.02.2012 when she was in ICU and that she was so upset with respondent No.2 that she did not speak to respondent No.2 thereafter. She repeatedly made requests to respondent No.2 to reverse the transaction of ₹ 2.24 Crore as money belong to her but instead of reversing ₹ 2.24 Crore, the respondent No.2 transferred only ₹ 1.00 Crore to her account on the pretext that he mistakenly had filled the lesser amount in cheque and did not have further leafs and promised to return the balance amount. He rather issued the cheque of ₹ 1.00 Crore in favour of the petitioner on the desire of the deceased. PW1 further deposed though it is possible in some accounts or in other employment papers, the deceased may have being shown as Surinder Makan Khanna, but she was never married to Amarjeet Singh Khanna as he was already a married man and had not taken divorce from his earlier living spouse. PW1 admitted Amarjeet Singh Khanna may be a nominee of the FDRs of deceased or in some of her bank accounts but denied the Will *Ex.PW1/8* is a forged or fabricated document and reiterated it was registered at Ghaziabad and is the last Will of the deceased. PW1 denied the deceased ever allegedly executed any other Will dated 30.12.2011.

9. PW2 Shri Sukhdeep Singh is an attesting witness to Will Ex.PW1/8 and he filed his affidavit Ex.PW2/A in respect of due execution of the Will and rather deposed on 15.07.2011 he was present with Smt.Tara Singh and saw the execution of the Will dated 15.07.2011

where the executrix had signed on her will and then he and Smt.Tara Singh signed the will at the request of the deceased and that everyone signed the will in presence of each other.

10. In his cross examination, PW2 reiterated the due execution of Will in the Sub Registrar Court at Ghaziabad and that he had seen the executrix signing the Will. He rather deposed the deceased had also executed a GPA on that day to which he too is a witness. PW2 deposed the deceased Smt.Hardeep Makan, he and his wife all went to Ghaziabad in his Toyota Innova car and that Tajinder Singh reached their on his own. He also deposed that Shri Amarjeet Singh Khanna and the deceased were only friends. He deposed the deceased was absolutely fine at that time and was talkative and interactive throughout the journey to Ghaziabad.

11. PW3 Smt.Tara Singh, the wife of the PW2 is also an attesting witness of the Will Ex.PW1/8. During her cross examination she also reiterated as to how the Will was executed and how all of them went to Ghaziabad. She supported the deposition of her husband PW2. She also admitted that Sh.Tajinder Singh did not travel with them. She also deposed Sh.Amarjeet Singh Khanna is a married man with two children and use to reside at Patel Nagar, New Delhi with his family.

12. PW4 Shri Roshan Baliar Singh, Deputy Manager of HDFC Bank, Vasant Vihar, New Delhi proved the certificate under Section 2(A) of the Bankers' Book of Evidence Act as *Ex.PW4/A*; statement of account of Shri Amarjeet Singh Khanna from 01.11.2013 to 19.04.2015 as *Ex.PW4/2*; statement of account of Ms.Surinder Khanna from 16.04.2009

to 31.10.2013 as *Ex.PW4/3*; photocopy of cheque dated 15.03.2012 for ₹ 1.00 Crore issued by deceased in favour of the petitioner No.1 as *Ex.PW4/4*; photocopy of the cheque dated 23.02.2012 for ₹ 2.24 Crore issued by the deceased in favour of the respondent No.2 as *Ex.PW4/5*; statement of account of Shri Amarjeet Singh Khanna as *Ex.PW4/6*; the letter dated 07.01.2013 informing the Branch Manager about the death of the deceased as *Ex.PW4/7*; cheque dated 15.02.2012 for ₹ 20.00 Lac issued in favour of petitioner No.1 by deceased as *Ex.PW4/8*; cheque dated 02.12.2011 for ₹ 10.00 Lac issued by the deceased in favour of Sh.Bal Kishan Gupta as *Ex.PW4/9*; cheque dated 03.04.2012 for ₹ 50.00 Lac issued by the respondent No.2 in favour of 'Amarjeet Singh & Sons HUF' as *Ex.PW4/10*; cheque for ₹ 50.00 Lac issued by the respondent No.2 in favour of Mr. Harmeet Khanna as *Ex.PW4/11*; cheque dated 19.03.2012 for ₹ 12.50 Lac issued by the deceased in favour of respondent No.2 as *Ex.PW4/12*; copy of the account opening form of Shri Amarjeet Singh Khanna dated 21.08.2010 as *Ex.PW4/13 (Colly)*; account opening form of Ms.Surinder Khanna dated 13.04.2009 as *Ex.PW4/14 (Colly)*; confirmation dated 29.10.2015 from HDFC Bank about the mobile phone and landline number as *Ex.PW4/15*; certificate under Section 2(A) of the Bakers' Book of Evidence Act as *Ex.PW4/16*; deposit slip dated 19.03.2012 for ₹ 12.50 Lac in the account of respondent No.2 as *Ex.PW4/17*; copy of cheque dated 19.03.2012 for ₹ 12.50 Lac issued by deceased in favour of respondent No.2 as *Ex.PW4/18*; confirmation issued by the bank about the last updated contact details of the deceased as on 02.12.2011 as *Ex.PW4/19*.

13. PW5 Shri Tajinder Singh Makan proved his affidavit *Ex.PW5/1*; the documents qua the last rites of the deceased at Lodhi Road Crematorium as *Ex.PW5/2(Colly);* obituary letter giving intimation about the last rites of the deceased to the members of the Fruit Merchant Association as *Ex.PW5/3*.

14. During his cross-examination he deposed the Power of Attorney was executed as there was a joint property in Maharashtra and they intend to dispose it of. He did not disclose about the sale proceeds of the said property being a confidential matter. PW5 further reiterated that everything was done as per the instructions of his deceased sister and even the documents were executed as per her wishe(s). He denied the deceased always considered respondent No.2 as her husband. Most of the questions put in cross examination were not relevant for the issues involved as relate to the relationship between the respondent No.2 and deceased - if were friends or husband and wife and also qua the funds transferred from one account to another or how the relations between petitioners and respondent no.2 deteriorated after the death of the deceased. Such questions were rather irrelevant for the issue framed.

15. PW6 Shri Kaushik Goswami, Assistant Manager of Standard Chartered Bank, Gurugram, Haryana proved his authority letter as Ex.PW6/1; certificate under Section 2(A) of the Bankers Book of Evidence Act as Ex.PW6/2; statement of account of deceased as Ex.PW6/3; photocopy (mirror image)of the cheque dated 19.03.2012 issued by the deceased in favour of the respondent No.2 for ₹ 12.50 Lac, the CTS Guidelines of Reserve Bank of India as Ex.PW6/4; deposit slip

dated 22.12.2007 showing deposit of ₹ 35.00Lac as Ex.PW6/5; and statement of account bearing No.523210022777 duly certified as per Bankers' Book of Evidence Act as Ex.PW6/6.

16. PW7 / Ms.Sithlesh Dohare, Lipik/Clerk of Sub-Registrar Office – V, Ghaziabad, Utter Pradesh proved the registration record and original of Ex.PW1/3 viz Power of Attorney registered on 15.07.2017 and the original record of Will Ex.PW1/8.

17. Respondent No.2 also entered the witness box and examined himself as RW1 and tendered his affidavit as Ex.RW1/A and relied upon the documents as Ex.RW1/1 to Ex.RW1/14. He proved the report of the Premier Forensic Science as Ex.RW1/2; Muslim Marriage Certificate as Ex.RW1/3; documents relating to change of religion as Ex.RW1/4 (Colly); receipt of complaint against Tajinder Singh Makan and petitioner No.1 before the Vasant Vihar Police Station, New Delhi as Ex.RW1/5; receipt of compliant dated 14.04.2012 made to the SHO, Police Station Vasant Vihar as Ex.RW1/6; discharge summary of Fortis Hospital as Ex.RW1/7; copy of the identity card issued by Air India to the deceased as Ex.RW1/8; copy of the rent agreement dated 01.08.2009 executed by the deceased as Ex.RW1/9; original rent agreement dated 17.01.2011 as Ex.RW1/10.

18. Though, this witness was cross examined, but the deposition of respondent-RW1 witness can be ignored in view of fact, the respondent No.2 herein had filed an application being IA No.13070/2017 seeking withdrawal of his objections in the present Testamentary Case. The application was allowed vide order dated 08.11.2017 as the parties agreed

to settle their disputes vide a compromise deed dated 24.10.2017 and in lieu thereof, had filed the said application for withdrawal of objections.

19. Despite the fact the objections were withdrawn by the respondent No.2, there is enough evidence on record by way of depositions of PW1, PW2, PW3 and PW5 which lead to an irresistable conclusion the Will dated 15.07.2011, executed by the deceased, was a valid Will and she executed it in a sound deposing mind; in the presence of attesting witnesses with whom she had gone from Munirka, Vasant Vihar, New Delhi to Ghaziabad, Uttar Pradesh in a Toyota Innova Car where she also executed a GPA concerning a joint property she had with her brothers in Maharashtra.

20. The attesting witnesses viz PW2 & PW3 had supported the case of the petitioner by testifying all material facts qua the execution of the Will; signing of the deceased on the Will; signing of the attesting witnesses on the Will and about the disposing mind of the deceased being talkative, interactive at the relevant time. All these witnesses deposed though the deceased was residing with respondent No.2 but only as a friend since respondent No.2 was a married man, had never taken divorce from his living wife and had two children from his wife.

21. Most of the questions asked by the learned counsel for respondent No.2 during the cross examination of the petitioner's witnesses were qua the nature of relationship the deceased had with the respondent No.2; her medical condition or who was taking care of her during her last days. The respondent No.2 despite extensive cross-examination of witnesses could not make any dent to their depositions qua the valid execution of Will

dated 15.07.2011. Hence I hold the Will dated 15.07.2011 is a validly executed Will of deceased Surinder Makan @ Surinder Makan Khanna, executed by her in a sound deposing mind; in the presence of two attesting witnesses, all of whom had signed the Will in the presence of each other. The issue No.1 is thus decided in favour of the petitioners and against the respondent No.2.

22. Consequently, I feel there is no impediment to the grant of letter of administration of estate of late Ms. Surinder Makan Khanna with Will dated 15.07.2011 annexed for the benefit of both the petitioners.

23. Registry to issue the letter of administration with Will dated 15.07.2011 annexed, subject to valuation to be obtained by this Court from the SDM and other agencies, if necessary and on paying the requisite stamp duty etc and also upon their furnishing administration bond and surety bond.

24. In view of above, the petition and pending application stands disposed of.

YOGESH KHANNA, J

NOVEMBER 17, 2017
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