

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

% Judgment delivered on: 04<sup>th</sup> December, 2017

+ TEST.CAS. 69/2011

KAILASH KUMAR CHALIA

..... Petitioner

versus

STATE & ORS

..... Respondent

**Advocates who appeared in this case:**

|                     |   |                                   |
|---------------------|---|-----------------------------------|
| For the Petitioner  | : | Mr. S.K. Bhaduri with Ms. Vandana |
| For the Respondents | : | None.                             |

**CORAM:-**

**HON'BLE MR JUSTICE SANJEEV SACHDEVA**

**JUDGMENT**

**SANJEEV SACHDEVA, J.**

1. This Petition under Section 276 of the Indian Succession Act, 1925 (hereinafter referred to as the Act) seeks Grant of probate/ Letters of Administration in respect of two Wills and Testaments both dated 26.06.2009 of Late Puran Dass Chalia and Late Smt. Lado Bai Chalia.

2. The Petitioner Sh.Kailash Kumar Chalia, son of Late Shri Puran Dass Chalia and Smt. Lado Bai Chalia (hereinafter referred to as the 'parents'), contends that apart from the Petitioner, the parents left behind Sh. Chittaranjan Kumar Chalia, the other son arrayed as Respondent No.2 and Smt. Usha Toberia daughter arrayed as Respondent No.3 and no other legal heirs.

3. According to the Petitioner, the parents were the co-owners of self-acquired property bearing No. B-11, South Extension, Part-I, New Delhi measuring approx 200 Sq. yds. comprising of ground floor, first floor and second floor (hereinafter referred to as the 'said property'), the plot having been purchased by registered Sale Deed dated 12.05.1956. Thereafter construction of ground floor, first floor and second floor was raised by them on the said plot.

4. It is contended that Shri Puran Dass Chalia expired on 14.01.2010 and Smt. Lado Bai Chalia expired on 19.02.2011. The parents were residents of the property bearing No.B-11, South Extension, Part-I, New Delhi-110049 at the time of their respective death. The parents were residing on the ground floor of the said property along with the Petitioner. The Petitioner was taking care of his deceased parents in all respects and he along with his family members enjoyed good and cordial relations with them.

5. It is contended that during their life time, the parents executed separate Wills both dated 26.06.2009 at Delhi. By virtue of the Will dated 26.6.2009 of Late Shri Puran Dass Chalia, he bequeathed his share in the ground floor of the said property in favour of the Petitioner and the First Floor in favour of Respondent No.2. The said Will further declared that the second floor of the said property, which was rented at Rupees Twelve Thousand at the time of execution of the will would be sold after the demise of the said Shri Puran Dass and his wife Smt. Lado Bai Chalia. Sale proceeds shall be

divided between the Petitioner and Respondent No. 2 in equal shares. However, till the life time of the said Shri Puran Dass Chalia, the rent was to be received by him and after his death by his wife Smt. Lado Bai Chalia. The said Will further states that the Gold Jewellery and the Cash in the joint pension account shall be divided equally between the Petitioner and Respondent No.2.

6. By virtue of the Will dated 26.6.2009, Late Smt. Lado Bai Chalia bequeathed her share in the ground floor of the said property in favour of the Petitioner and the First Floor in favour of Respondent No.2 The said Will further declared that the second floor of the said property, which was rented at Rupees Twelve Thousand at the time of execution of the will would be sold after the demise of Late Smt. Lado Bai Chalia and her husband Shri. Puran Dass Chalia. Sale proceeds thereof shall be divided between the Petitioner and Respondent No.2 in equal shares. However, till the life time of the said Smt. Lado Bai Chalia, the rent was to be received by her and after her death by her husband Shri Puran Dass Chalia. The said Will further states that the Gold Jewellery and the Cash in the joint pension account shall be divided equally between the Petitioner and Respondent No.2.

7. It is contended that the two Wills dated 26.06.2009 executed by Late Shri Puran Dass Chalia and Smt. Lado Bai Chalia respectively were attested by two attesting witnesses namely Shri Kedar Nath

Sachdeva Son of Late Sunder Dass Sachdeva and Shri Rajiv Marwah  
Son of Late S.P. Marwah.

8. The Petitioner submits that at the time of execution of the respective Wills the deceased were in good senses and in sound disposing mind.

9. It is further stated that permanent place of residence of the parents was at Delhi and the immovable property specified in Schedule 'A' is also situated in Delhi within the territorial limits of this Court.

10. Notice was issued to the State; Chief Revenue Controlling Officer and Respondents No.2 and 3 on 30.08.2011. Citation was also published in the Statesman on 06.10.2011.

11. Respondent No. 1, 2 & 3 entered appearance through their respective counsel on 19.10.2011. Respondent No.2 filed an affidavit giving his no objection to the Grant of Probate/Letters of Administration.

12. Respondent No. 3 filed objections to the petition denying that the parents of the parties had executed Wills dated 26.6.2009 and further contending that father Late Shri Puran Dass Chalia was not in good senses and in sound disposing mind at the time of execution of the said Will, he was suffering from Parkinson and Dementia since long and conjunctivitis in both eyes and his right arm was trembling for the last many years.

13. By order dated 28.05.2012 the following issues were framed:

- “1. Whether Sh. Puran Das Chalia executed a valid Will dated 26.06.2009 in favour of the Petitioner and Respondent No. 2? OPP*
- 2. Whether Smt. Lado Bai Chalia executed a valid Will dated 26.06.2009 in favour of the Petitioner and Respondent No. 2? OPP*
- 3. Whether the Petitioner is entitled to grant of Probate / Letter of Administration in respect of the aforesaid Wills, both dated 26.06.2009 executed by Sh. Puran Das Chalia and Smt. Lado Bai Chalia in respect of the property as mentioned in Schedule-A of the petition? OPP*
- 4. Relief.”*

14. Petitioner led his evidence and examined three witnesses viz. himself as PW2 (mentioned as PW1 in evidence affidavit), Shri. Rajeev Marwah, one of the attesting witnesses to both the Wills dated 26.6.2009 was examined as PW1 (mentioned witness as PW2 in evidence affidavit) and Smt. Satya Chalia the wife of the Petitioner as PW3. Shri. Sanjay Gulati from Punjab National Bank was summoned as PW4. Shri Kedar Nath Sachdeva the other attesting witness filed his evidence by way of affidavit but the same was not tendered in evidence. The same is accordingly disregarded. Petitioner closed his evidence on 16.10.2014

15. Respondent No.2 did not lead any evidence. Respondent No.3 filed the list of witnesses and summoned Dr. Prashant Sanwal on

behalf of Metro Hospital, Lajpat Nagar. Although the said witness appeared but none appeared on behalf of Respondent No.3, hence Dr. Prashant Sanwal was discharged without being examined. Evidence of Respondent No.3 was closed on 28.02.2017. No other witness of the Respondents was either summoned or examined.

16. None appeared on behalf of Respondent No.3 and thus was proceeded ex-parte on 04.08.2017.

17. The issue wise findings of this court are as follows:

**Issue No.1**

1. *Whether Sh. Puran Dass Chalia executed a valid Will dated 26.06.2009 in favour of the Petitioner and Respondent No. 2? OPP*

18. The Petitioner Shri Kailash Kumar Chalia (PW2) filed affidavit of evidence affirming on oath the averments made in the Petition. It was reiterated by him that his deceased parents were owners of property bearing No. B-11, South Extension, Part-I, New Delhi, in equal share and the said property was purchased by them by a Registered Sale Deed dated 12.05.1956. The said Sale Deed was exhibited as Ex.PW-1/1 (earlier exhibited as Ex. P2/R2). Copy of the site plan filed along with the Sale Deed, was exhibited as Ex.PW-1/2 (earlier exhibited as Ex. P2/R2). The Death certificate of the Testator Late Shri Puran Dass Chalia was marked as Ex.PW-1/3 (earlier exhibited as P5/R2/R3) which indicated the date of his death as 14.01.2010. He deposed that Late Shri Puran Dass Chalia had executed Will dated 26.06.2009. The Original Will of the Testator

was exhibited as Ex PW-2/1 (earlier exhibited as P3/R2). He further deposed that the Testator was in good senses and sound disposing mind at the time of executing the said Will and had affixed his thumb impression on the said Will after understanding the contents of the said Will. To prove that the residence of the Late Shri Puran Dass Chalia and Late Smt. Lado Bai Chalia the Petitioner marked photocopies of the Election Identity Cards of the said parents as Ex PW-1/5 & EX PW-1/6 respectively (earlier exhibited as Ex' P7/R2). The Deponent-Petitioner has set forth in schedule A the valuation of the said property, which was exhibited as Ex PW-1/7.

19. During cross examination by the Learned Counsel for Respondent No.3 it was suggested by the Learned Counsel for the Objector-Respondent No.3 that the Testator was not keeping well at the time of executing the said Will. His hands use to shake and he had hearing problem. The said suggestions were denied by the Petitioner. It was stated by the Petitioner that he had no knowledge as to in whose presence the said Will of the decease father was executed as he was not present at that time. It was further stated that the said Will bears the thumb impression of his father Late Shri. Puran Dass Chalia. It was denied that the thumb impression of the father of the Petitioner was taken fraudulently.

20. In order to prove due execution of the will dated 26.06.2009 of Late Sh. Puran Dass Chalia, the Petitioner examined one of the

attesting witnesses; Shri Rajeev Marwah as PW1. PW1 in his affidavit deposed as under:

*“1. The deponent states that Late sh. Puran Dass chalia S/o Late Sh. Shiv Ram chalia and Smt. Lado Bai chalia W/o Late Sh. Puran Dass chalia were known to the deponent. It is stated that said Sh. Puran Dass Chalia as well as his wife Smt. Lado Bai Chalia both have expired.*

*2. The deponent states that Late Sh. Puran Dass Chalia and his wife Smt. Lado Bai chalia were residing at their property No.B-11, South Extension, Part.I, New Delhi-110049.*

*3. The deponent states that sh. Puran Dass chalia during his life time had executed a Will dt. 26.06.2009 in the presence of the deponent as well as in the presence of another witness Sh Kedar Nath Sachdeva S/O Sh. Sunder Das Sachdeva and also in the presence of each of us. The said WILL is exhibited as Ex. PW-2/1.*

*4. The deponent states that at the time of execution of the said Will dt. 26.06.2009, Sh. Puran Dass Chalia was in good sense and sound disposing mind and also was in good physical condition. It is stated that said Sh. Puran Dass Chalia had put his thumb impression in his said WILL dt. 26/6/2009 in the presence of deponent as well as in the presence of said another attesting witness sh. Kedar Nath Sachdeva after understanding the contents of the said WILL. I and said Sh. Kedar Nath Sachdeva had also signed the said WILL dt. 26.06.2009 of Sh' Puran Dass Chalia in his presence as well as in the presence of each of us as attesting witnesses of the said Will.*

*5. The deponent states that Smt. Lado Bai chalia w/o sh. Puran Dass Chalia, during her life time had also executed a WILL dt. 26/6/2009 in the presence of the*

*deponent as well as in the presence of another witness sh. Kedar Nath Sachdeva S/o sh. sunder Das Sachdeva and also in the presence of each of us. The said WILL of Smt. Lado Bai is exhibited as Ex PW- 212.*

6. *The deponent states that at the time of execution of the said Will dt. 26/6/2009, Smt. Lado Bai chalia was in good sense and sound disposing mind and also was in good physical condition. It is stated that said Smt. Lado Bai Chalia had put her thumb impression in her said Will dt. 26/6/2009 in the presence of deponent as well as in the presence of said another attesting witness sh. Kedar Nath Sachdeva after understanding the contents of the said WILL. I and said Sh. Kedar Nath Sachdeva had also signed the said Will dt. 26/6/2009 of Sh' Smt. Lado Bai Chalia in her presence and also in the presence of each of us as attesting witnesses of the said Will.*

7. *The deponent states that the deponent identifies the thumb impression of said Sh. Puran Dass Chalia in his said Will dt. 26/6/2009 exhibited as Ex. PW-2/1 The deponent also identifies the thumb impression of said Smt. Lado Bai Chalia in her said WILL dt. 26/6/2009 exhibited as Ex. PW-2/2. The deponent identifies the signature of said another witness sh. Kedar Nath Sachdeva in said both the WILLS dt. 26/6/2009 of Late sh. Puran Dass chalia as well as Late smt. Lado Bai chalia and the deponent also identifies his own signatures in said both the Wills dt. 26/6/2009 of Late sh. Puran Dass chalia and his wife Smt. Lado Bai Chalia."*

21. In cross examination by Learned Counsel for Respondent No.3, PW1 stated that he was one of the witnesses to the said Will. He had visited the house of the Testator to witness the said Will where a person from the court to notarize the said Will along with the other

Witness Viz. Sh. Kedar Nath Sachdeva were present. He also stated that at the time of execution of the said Will, the Testator was in good sense, sound disposing mind and good physical condition. He admits that the hands of the Testator used to shake since a long time but denied that the Testator was suffering from any ailment at the time of execution of the said Will. He denied the suggestion that he has fraudulently filed the affidavit at insistence of the Petitioner.

22. The Petitioner also examined Smt. Satya Chalia wife of the Petitioner as PW3. She stated that both the Testators during their lifetime executed their respective Will dated 26.06.2009 voluntarily, thereby bequeathing the said property bearing No. B-11, South Extension, Part-I, New Delhi in equal share in favour of the Petitioner and Respondent No. 2. She also deposed that both the Testators were having sound disposing mind and had good physical condition during the period of June 2009.

23. In cross examination by Learned Counsel for Respondent No.3 she denied that the said Wills were forged by the Petitioner.

24. Another witness viz. Shri. Sanjay Gulati from Punjab National Bank was summoned and examined as PW4. He brought the Original passbook of the pension account no. 0176000300111327 in the name of P.D. Chalia and Smt. Lado Bai Chalia. The copy of the passbook was exhibited and marked as Ex. PW-4/l(Colly).

25. In the cross examination by Learned Counsel for Respondent No.3 it was stated by the said witness that as per the records maintained by the bank, the Testator was operating the bank account by putting his thumb impression. However initially the Testator affixed the signature to open the bank account.

26. No evidence on the said issue has been produced by the Respondents. There is also no rebuttal to the evidence of the Petitioner. The Petitioner has thus proved that Sh. Puran Dass Chalia was in a sound disposing mind and duly executed the Will dated 26.06.2009 in accordance with the provisions of Section 63 of the Act. The Issue is decided in favour of the Petitioner.

**Issue No.2.**

2. *Whether Smt. Lado Bai Chalia executed a valid Will dated 26.06.2009 in favour of the Petitioner and Respondent No .2? OPP*

27. The Petitioner Shri Kailash Kumar Chalia (PW2) proved the Death Certificate of Testatrix [Ex.PW-1/4(earlier exhibited P6/R3/R2)] showing 19.02.2011 as the date of death. He deposed that Late Smt. Lado Bai Chalia during her life time executed Will dated 26.06.2009. The Original Will of the Testatrix is exhibited as Ex PW-2/2 (earlier exhibited as P4/R2). It is further deposed that the Testatrix was in good senses, sound disposing mind and good physical condition at the time of executing the said Will and had affixed her

thumb impression in the said Will after understanding the contents of the said Will.

28. As noticed hereinabove, the Petitioner also examined Shri Rajeev Marwah as PW1 to prove the due execution of the will dated 26.06.2009 of Late Smt. Lado Bai Chalia. Smt. Satya Chalia wife of the Petitioner (PW3) deposed that the Testatrix was in good sense, sound disposing mind and had good physical condition. Witness Shri. Sanjay Gulati from Punjab National Bank (PW4) affirmed that as per the records the Testatrix was operating the bank account by putting thumb impression. However initially the Testatrix affixed the signature to open the bank account.

29. No evidence on the said issue has been produced by the Respondents. There is also no rebuttal to the evidence of the Petitioner. The Petitioner has thus proved that Smt. Lado Bai Chalia was in a sound disposing mind and duly executed the Will dated 26.06.2009 in accordance with the provisions of Section 63 of the Act. The Issue is decided in favour of the Petitioner.

### **Issue No.3.**

3. *Whether the Petitioner is entitled to grant of Probate / Letter of Administration in respect of the aforesaid Wills, both dated 26.06.2009 executed by Sh. Puran Das Chalia and Smt. Lado Bai Chalia in respect of the property as mentioned in Schedule-A of the petition? OPP*

30. The decision on this issue is consequential to the decision on the first two issues. Since the First two issues have been decided in favour of the Petitioner, who has duly proved that the Sh. Puran Dass Chalia and Smt. Lado Bai Chalia were in sound disposing mind and duly executed the respective last Wills dated 26.06.2009 in accordance with the provisions of Section 63 of the Act, this issues is also decided in favour of the Petitioner.

31. The Petitioner, not having been appointed as an Executor, is not entitled to grant of probate in terms of Section 222 of the Act. However, as the Petitioner has duly satisfied the requirements of section 276 of the Act and established that the requirements of section 63 of the Act also stand satisfied, it would be in the interest of justice to grant letters of administration, with the Wills annexed, to the Petitioner.

32. In view of the above, Consequently, the present petition is allowed. Letters of administration with a copy of the Wills dated 26.06.2009 of both Sh. Puran Dass Chalia and Smt. Lado Bai Chalia annexed thereto is granted in favour of the petitioner, subject to the Petitioner furnishing the requisite Court fee in terms of the valuation report and an administrative bond with one surety in accordance with law.

**SANJEEV SACHDEVA, J**

December 04, 2017

HJ