

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

% Judgment delivered on: 15th November, 2017

+ TEST.CAS.91/2012

ASHOK ARORA

..... Petitioner

versus

THE STATE & ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Ashish Rana, Advocate.

For the Respondents : Ms. Divyani Sehgal for Mr. Naushad Ahmed Khan,
Advocate for respondent No.1/State

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGEMENT

SANJEEV SACHDEVA, J

1. Petitioner has filed the present Petition under Section 276 of the Indian Succession Act, 1925 (hereinafter referred to as the Act) for Grant of probate in respect of will dated 26.07.2010 of late Capt. Rishi Raj Arora (Retd). Petitioner claims to be the real brother of the deceased Capt. Rishi Raj Arora (Retd.).

2. It is contended that Late Capt. Rishi Raj Arora was married Respondent No. 2 in the year 1972 but had been living separately from her wife for more than 30 years due some misunderstanding and differences of opinion and thinking. The deceased and Respondent No.2 lived together lastly as husband and wife in a rented

accommodation at H.No. E-172, West Patel Nagar, Delhi. Thereafter neither Rishi Raj Arora nor the Petitioner had any knowledge about the whereabouts of Respondent No.2.

3. Late Capt. Rishi Raj Arora is stated to have expired on 22.02.2012. He had no issue from the wedlock with Respondent No.2. He is stated to have left behind immoveable properties and movable assets within the territorial jurisdiction of this court. It is stated that at the time of his death, his permanent place of residence was in Delhi, within the territorial limits of this Court.

4. It is contended that Late Capt. Rishi Raj Arora executed his last Will and testament dated 26.07.2010 which was duly registered vide document bearing Registration no.4740 in Book no. 3 Volume No.527 at Pages 105 to 107 on 26.07.2010 with the Sub Registrar IX Kapashera, New Delhi.

5. Notice of the petition was issued to the Respondents on 11.03.2013. Citation was published from Delhi and Hyderabad in "The Hindu" and also affixed at a conspicuous part of properties bearing No.MIG Flat No.455, Ground Floor, Block-H, Naraina Vihar, New Delhi, plot No.75, Block-H, out of survey No.582, Sector-III, East City from out of sanctioned layout No.40, situated at Bibinagai" Village, Bibinagai" Mandal, Nalgando, District Hyderabad, as well as the Notice Board of the Court.

6. Respondent No.2 has been served by way of publication in “The Hindu” edition dated 31.01.2013. Despite service none appeared for respondent No. 2. Respondent No. 2 was proceeded ex-parte on 20.05.2013

7. The petitioner has led his ex-parte evidence. The Petitioner, Mr. Ashok Arora, filed his affidavit of evidence as PW1 affirming the averments contained in the petition. The photocopy of passport of Petitioner was exhibited as Exb. PW-1/A to prove the identity of the Petitioner. He has also proved the death of late Capt. Rishi Raj Arora on 22.02.2012 by producing the Death Certificate and exhibiting it as Exb.PW1/B. Certified copy of the will was produced and the same was marked as Exb.PW-1/C. The photocopy of the SBI passbook of the deceased was exhibited as Exb.PW-1/D & E to prove the balance in the account of the deceased. Shares as per list holding statement was exhibited as Exb.PW-1/F.

8. Mr. J.N. Tanwar the attesting witness to the said Will was examined as PW2. He deposed in his affidavit by way of evidence as under:

“1. That the deponent is one of the attesting witnesses of the Will dated 26.07.2010 duly registered with Sub-Registrar-IX, Delhi vide Registration No. 4740 in Book No.III, VolumeNo.527 on pages 105 to 107 made and executed by late Capt. Rishi Raj. Arora in favour of his brother Ashok Arora. Photocopy of my election card is exhibited herewith as Exb.PW-2/A [O.S.R.]. The certified copy of WILL is already exhibited herewith as Exb.PW-1/C.

2. *That the said, WILL was signed by the Executant in presence of the deponent and another witness namely Sh. S.P. Verma.*

3. *That at the time of. execution of the said WILL, deceased Sh. Rishi Raj Arora was in state of sound and disposing mind and executed without any fraud, pressure or coercion in any manner.*

4. *That it is my true and correct statements”.*

9. Mr. S.P. Verma, the other attesting witness to the said Will was examined as PW3. In his affidavit by way of evidence the said witness affirmed as under:

“1. That the deponent is one of the attesting witnesses of the Will dated 26.07.2010 duly registered with Sub-Registrar-IX, Delhi vide Registration No. 4740 in Book No.III, VolumeNo.527 on pages 105 to 107 made and executed by late- Capt.' Rishi Raj Arora in favour of his brother Ashok Arora. Photocopy of my election card is exhibited herewith as Exb. PW-3/A [O.S.R.]. The certified copy of WILL is already exhibited herewith as Exb.PW-1/C.

2. *That the said WILL was signed by the Executant in presence of the deponent and another witness namely Sh. J.N. Tanwar.*

3. *That at the time of execution of the said WILL, deceased Sh. Rishi Raj Arora was in state of sound and disposing mind and executed without any fraud, pressure or coercion in any manner.*

4. *That it is my true and correct statement”*

10. Sh. Rajbir, UDC (PW – 4) from the office of Sub-Registrar produced the Will registered in the records of the Sub Registrar. Sh. S C Gujral Manager Syndicate Bank (PW – 5) and Sh. Sushil Kumar Jain, Manager State Bank of India Narayana Branch, Delhi (PW – 6) proved the respective bank account statements of the deceased.

11. There is no rebuttal to the evidence of the Petitioner. None of the witnesses of the petitioner were even cross examined.

12. Consequently, I am satisfied that the petitioner has duly proved the factum of death of Late Capt. Rishi Raj Arora. He has also proved that Late Capt. Rishi Raj Arora had duly executed his last Will and Testament on 26.07.2010 (Exb. PW1/C). The requirements of section 63 of the Act stand satisfied.

13. Though, petitioner seeks grant of probate under section 276 of the Act, 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 Will annexed to the petitioner.

14. In view of the above, the present petition is allowed. Letters of administration, with a copy of Will dated 26.07.2010 annexed thereto

is granted in favour of the petitioner, subject to the petitioner paying the requisite fee in terms of the valuation report.

15. The question further arises is as to whether the petitioner, who is the sole beneficiary under the Will dated 26.07.2010 should be required to furnish an Administration Bond under section 291 of the Act.

16. To hold that Section 291 envisages the furnishing of an administration bond by a sole beneficiary or a sole legatee would lead to absurd consequences, for, the said sole beneficiary/sole legatee would then be saying surety for the estate of the deceased, which has exclusively devolved upon him, and it would be paradoxical to hold that a person can stand surety for himself.¹

17. Keeping in view that the petitioner is the sole beneficiary under the Will dated 26.01.2010, the petitioner is granted exemption from executing an administration bond.

18. The petition is allowed in the above terms. No orders as to costs.

SANJEEV SACHDEVA, J

NOVEMBER 15, 2017
HJ

¹ *Sanjay Suri v. State*, AIR 2004 Delhi 9; *Richa Pardeshi v. State*, 2012 (131) DRJ 92; *Veena Ramtri v. State* (TEST. Cas. 61/2015 decided on 30.08.2017)