

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

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Reserved on: 03rd August, 2017
Delivered on: 18th September, 2017

+ TEST. CAS. 79/2012

VIJAY NAGAR

..... Petitioner

Versus

STATE & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Ashish Mohan and Mr. Mohit Kumar, Advocates

For the Respondents : Mr. D.P. Kaushik, Adv.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGEMENT

SANJEEV SACHDEVA, J

1. The petitioner has filed this petition under Section 278 of the Indian Succession Act, 1925 (hereinafter referred to as the Act) for grant of Letter of Administration in respect of Will and Testament dated 07.08.1997 of late Sh. Banarasi Dass Sharma.

2. Shri Banarasi Dass Sharma expired on 26.12.2009.

3. At the time of his demise, late Sh. Banarasi Dass Sharma was permanent resident of A-6/170A Janta Flats, Paschim Vihar, New Delhi.

4. Shri Banarasi Dass Sharma is stated to have left immoveable property situated at New Delhi and within the territorial jurisdiction of this court.

5. As per the petitioner, the deceased Shri Banarasi Dass Sharma executed his last Will and Testament on 07.08.1997, which was signed and executed on 11.08.1997.

6. The Will dated 11.08.1997 was registered vide Regn. No. 19467 in Addl. Book No. III, Vol. 2912 on pages 91 to 92 on 11.08.1997 in the office of Sub-Registrar-I.

7. The deceased late Sh. Banarasi Dass Sharma was Hindu by religion and at the time of his death was survived by his wife Smt. Gianwati and two daughters Smt. Vijay Nagar and Smt. Veena Nagar @ Jyoti Nagar.

8. The petition seeking Letter of Administration has been filed by the elder daughter Smt. Vijay Nagar.

9. Notice was issued in the petition. Citation was published in Jansatta (Hindi Edition) on 25.12.2012 and The Statesman (English Edition) on 27.12.2012.

10. The respondent no. 3 i.e. Smt. Veena Nagar @ Jyoti Nagar entered appearance through counsel on 12.07.2013 and sought time to file reply. Four weeks' time was granted to file reply, however, no reply was filed.

11. On 28.01.2014 counsel for Smt. Veena Nagar @ Jyoti Nagar – respondent no. 3 sought further time to file objections. Further four weeks’ time was granted to respondent no. 3.

12. Respondent no. 2 who had been served but had not entered appearance was proceeded exparte on 28.01.2014.

13. Further time was sought by respondent no. 3 to file objections within four weeks, which was granted by order dated 10.07.2014. Even that order was not complied with.

14. On a contention of counsel for respondent no. 3 made on 08.09.2014 that objections could not be filed as certified copy was not received from counsel for the petitioner. Further opportunity of four weeks was granted to file objections.

15. Objections were filed by Respondent No. 3 but they were defective and were returned by the Registry under defects. The defects were not cured.

16. None appeared for Respondent on 31.10.2014 and accordingly Respondent no. 3 was proceeded exparte. The petition was listed for arguments on 17.12.2014.

17. Respondent no. 3 filed an application seeking setting aside of the order proceeding exparte. By order dated 16.02.2016, in view of the fact that repeated opportunities had been granted to the respondent to file objections and no objections were filed, no ground was found for recalling of the order. The application was dismissed. Thereafter the

petition was placed for recording of evidence of the petitioner to prove the Will.

18. Respondent No. 3 did not take any further steps and accordingly order dated 16.02.2016 became final.

19. Petitioner has led his evidence and has examined two witnesses.

20. PW1 Sh. R.C. Tomar, one of the attesting witnesses of the Will and PW2 is the petitioner herself.

21. Sh. R.C. Tomar (PW1) in his evidence affidavit has stated as under:

1. *I state that Banarasi Dass Sharma had executed a registered Will which was scribed by me on 07.08.1997 upon his instructions and executed and registered on 11.08.1997 in my presence and I am one of the witnesses to the same.*
2. *I state that I had signed the said Will, which was scribed on 07.08.1997 and executed and registered on 11.08.1997 as a witness at the request of Late Shri Banarasi Dass Sharma who had admitted the same to be his last will and testament. Will dated 11.08.1997 is marked as PW1/1.*
3. *I state that Banarasi Dass Sharma first affixed his signature to the will in my presence and after him Shri Murli Dhar signed the Will as an attesting witness and thereafter I affixed my signature on the said will as an attesting witness. I further state that all of us had signed the Will in the presence of each other on 11.08.1997.*

4. *I state that I have been shown the photocopy of the said Will which was scribed by me on 07.08.1997 by Late Shri Banarasi Dass Sharma. I state that I recognize my signature appearing there as an Attesting Witness.*

22. In his oral testimony on 11.11.2016 Sh. R.C. Tomar had deposed as under: -

“PW1 Mr. R. C. Tomar, s/o late Sh. Bhim Singh, r/o Chamber No. 496, Western Wing, Tiz Hazari Courts, Delhi.

On SA.

I tender my evidence by way of affidavit Ex. PW1/A which bears my signatures at points 'A' and 'B'. The Will dated 11.08.1997 is Ex. PW1/1. The testator Mr. Banarsi Dass has signed the Will at Point A at page 1, at point B and C at the back portion of page 1. His thumb impressions also appear above point B and below point C. Mr. Banarsi Dass Sharma also signed at point C at page 2 of the Will. I have signed the Will as a witness at point D and E. my stamp is also affixed below my signatures. The other witness Mr. Murlidhar has signed at point F on the back portion of page 1 of the Will. His thumb impression is also affixed along with the signature at point F. He has also signed at point G at page 2 of the Will. The manner in which the Will has been signed by Mr. Banarsi Dass Sharma, Mr. Murlidhar and myself is already described in detail in my affidavit. I can identify the signatures and thumb impressions of Mr. Banarsi Dass Sharma and Mr. Murlidhar as the same has been done in my presence.

XXXX by respondent No.1.

Nil, as none has appeared for the State and other respondents are exparte.”

23. The petitioner - Smt. Vijay Nagar appeared as PW2. In her affidavit, PW2 affirmed the averments in the petition. She has *inter alia* proved the death of late Sh. Banarasi Dass Sharma on 26.09.2012 by producing the death certificate and proving the same as Exb. PW2/1.

24. There is no rebuttal or cross-examination to the evidence of PW1 and PW2. Respondent no. 3 did not even appear or cross-examine PW1 and PW2.

25. By his un rebutted testimony the attesting witness Sh. R.C. Tomar, has proved that the Will dated 07.08.2017 was executed and registered on 11.08.1997 as the last Will and Testament of late Sh. Banarasi Dass Sharma. He has identified the signatures of late Sh. Banarasi Dass Sharma as well as the thumb impression on the Will as well as that of the other attesting witness Mr. Murlidhar apart from his own thumb impression and signatures. Sh. R.C. Tomar has deposed that the Will Exb. PW1/1 was scribed by him on 07.08.1997 upon instructions of late Sh. Banarasi Dass Sharma. The Will was executed and registered on 11.08.1997 in his presence. He has stated that he had signed the Will as an attesting witness at the request of late Sh. Banarasi Dass Sharma who had admitted the same to be his last Will and Testament. Sh. R.C. Tomar has deposed that late Sh. Banarasi Dass Sharma first affixed his signatures to the Will in his presence and after him Sh. Murlidhar signed the Will as attesting witness and thereafter he

(R.C. Tomar) affixed his signatures on the Will as an attesting witness. He has deposed that all of them had signed the Will in the presence on each other on 11.08.1997.

26. Sh. R.C. Tomar has thus proved the due and valid execution of Will Exb. PW1/1. The petitioner (PW2) has proved the death of late Sh. Banarasi Dass Sharma.

27. There is no rebuttal or counter to the evidence led by the petitioner.

28. Consequently, the present petition is allowed. The letters of administration with a copy of the Will dated 07.08.1997 annexed thereto is granted in favour of the petitioner, subject to her furnishing the requisite fee in terms of the valuation report.

29. The question further arises is as to whether the petitioner, who is the sole beneficiary under the Will dated 07.08.1997 should be required to furnish an Administration Bond under section 291 of the Act.

30. 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 her, and it would be paradoxical to hold that a person can stand surety for himself.¹

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)**

31. Keeping in view that the petitioner is the sole beneficiary under the Will dated 07.08.1997, the petitioner is granted exemption from executing an administration bond.

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

SANJEEV SACHDEVA, J

September 18, 2017
'rs'

