

\$~20

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Date of Decision: 14th September, 2017

+ FAO 403/2015

DR RAJENDRA DEV PANWAR

..... Appellant

Through: Mr.B. Mohan and Mr.Siddharth
Aggarwal, Advocates

versus

THE STATE (NCT OF DELHI)

..... Respondent

Through: Mr.Sanjoy Ghose, Addl. Standing
Counsel for GNCTD with
Mr.Dhananjay Rana and Ms.Nidhi
Raman, Advocate

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. The appellant has challenged the impugned judgment dated 14th August, 2015 whereby the Trial Court dismissed the petition for grant of probate of Will dated 5th July, 2005 of late Dr.Rajni Mathur.
2. The appellant applied for probate of the Will dated 5th July, 2005 of late Dr. Rajni Mathur, who was working as a Lecturer in the College of Vocational Studies, Delhi University. The appellant was working as a Principal in the aforesaid College. Late Dr.Rajni Mathur expired on 13th April, 2013. The Will dated 5th July, 2005 of late Dr.Rajni Mathur is hand-written and is mainly in Hindi language with some English words. The learned Trial Court dismissed the petition on the ground that there is no valid

execution of the Will by the testatrix and attestation by the two witnesses and there are suspicious circumstances.

3. Learned counsel for the appellant urged at the time of hearing that the Will was written the testatrix on 5th July, 2005 but was executed by her on 6th August, 2005 in the presence of the two witnesses who attested the Will as witnesses in her presence and in the presence of each other. He further submitted that there are no suspicious circumstances.

4. The original Will has been seen from the record of the Trial Court. The original Will is a two-page hand-written document. The heading of the Will contains the title "Will" and the date of "5th July, 2005", meaning thereby that the Will was written on 5th July, 2005. At the end of the Will, the testatrix signed the Will and again mentioned the date of 5th July, 2005 below her signature. The date of "5th July, 2005" mentioned at the end is the date of execution of the Will and not the date of the drawing of the Will as contended by the learned counsel for the appellant.

5. Both the witnesses have put their signatures as witnesses to the Will and have written the date of "6th August, 2005" below their signatures meaning thereby that they were not present when the Will was signed by the testatrix on 5th July, 2005. However, PW-2 and PW-3 signed the verification along with the petition in which they stated that the testatrix had signed the Will in their presence. PW-2, in reply to the Court question, deposed that no one signed the Will in his presence, whereas PW-3 deposed in reply to the Court question that the testatrix came with the Will in the library and he signed the Will on her request and thereafter, PW-2 also signed the Will. He further deposed that the testatrix signed the Will in his presence.

6. This Court is of the view that the Will dated 5th July, 2005 was executed by the testatrix, Dr. Rajni Mathur on 5th July, 2005 and the same was signed by the two witnesses on 6th August, 2005 who did not see the deceased executing the Will. As such, Will has not been executed and attested by the two witnesses in the presence of each other. The submission made by the learned counsel for the appellant that the Will was executed on 6th August, 2005 and not on 5th July, 2005 is not supported by any evidence.

7. Rule 3 of the Original Side Practice Direction No.4 of 1974 “Testamentary and Interstate Jurisdiction” requires the petitioner to disclose the names of members of the family or other relatives upon whom the estate would have devolved in case of an intestacy along with their present place of residence. However, the petitioner did not disclose the names of the members of the family and all other relatives in the probate petition filed before the Trial Court. The petitioner has filed CM No.32890/2017 to amend the petition, which is not permissible at this stage.

8. There is no merit in the appeal, which is hereby dismissed. Learned counsel for the petitioner seeks refund of the Court fees deposited with the District Judge. The appellant is at liberty to file an appropriate application for refund of the Court-fees before the District Judge which shall be considered in accordance with the applicable rules. The pending application is dismissed.

9. Copy of this judgment be given *dasti* to the counsel for the parties under signatures of the Court Master.

September 14, 2017
Dev

J.R. MIDHA, J.