

\$~1A

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

Decided on: 10th October, 2019

+ **FAO 142/2017**

SWAMI SUPRAKASHANANDA & ORS. Appellants

Through: Mr.Amitava Acharjee & Mr.Ayush
Acharjee, Advocates.

versus

STATE & ORS. Respondents

Through: Ms.Ayushi Chaudhary, Advocate for
Ms.Nidhi Raman, Advocate for R-1.
Mr.A.K. Mishra & Mr.Samrat,
Advocates for R-3 to R-5

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

%

1. The present appeal is directed against a judgment dated 21.01.2017 passed by learned ADJ-02, North-West, Rohini Courts, Delhi in PC No. 50836/2016 [Old PC No. 95/2012]. By the impugned judgment, the Trial Court rejected a petition for grant of probate/letters of administration, in respect of a Will dated 19.04.2011 of late Ms. Sarla Mehra [hereinafter referred to as the "Will"].

2. The petition was filed by the appellant No.1 on 31.10.2012 seeking probate/letter of administration of the Will, which was registered. The appellant No.1 is the secretary of Ramakrishna Mission Sevashrama, Vrindavan, District Mathura, Uttar Pradesh

[appellant No.2 herein], and was appointed as the executor of the said Will.

3. The Will in original, as also the death certificate of the testatrix, were annexed with the probate petition. It was stated that the testatrix was unmarried and had left three legal heirs being her sister [Smt. Kusum Arora], sister's son [Sh. Samir Arora] and sister's daughter [Smt. Anita Mehra]. The movable and immovable properties of the deceased were enumerated. Alongwith the probate petition, copies of two sale deeds dated 16.04.1998 and 17.04.1998 executed by Sh. M.R. Khan and Smt. Maryam Khanam in favour of the testatrix were also filed in respect of the immovable property, being Flat No. LD- 194, Sardar Patel Apartments, Pitampura, Delhi- 110034.

4. The Will of the testatrix records her affinity to the Ramakrishna Mission Sevashrama at Vrindavan and directs sale of her aforementioned immovable property with the proceeds being distributed in the following manner:-

“A). Rs.5,00,000/-(Rupees Five Lacs Only) be given to Sarvadesik Arya Pratinidhi Sabha, Dayanada Bhawan, 3/5 Asaf Ali Road, New Delhi- 110 002.

B). Rs 2,50,000/- (Rupees Two Lacs Fifty Thousand Only) to Shri. Samir Arora, son of Shri T.R. Arora resident of D-356, Defence Colony, New Delhi, Pin -110 024.

C) Rs. 1,00,00,000/- (Rupees One Crore only) to Ramakrishna Mission Sevashrama, Vridaban, Mathura, Uttar Pradesh.

The money shall be deposited in the Endowment Fund of the Mission and the interest of the same shall be used for any philanthropic activities as decided by The Secretary of the Ramakrishna Mission Sevashrama, Vridndaban.

D) The balance of the proceeds received shall be donated to Ramakrishna Mission, Hd. Qtr. Belur Math, Kolkata, West Bengal- 771 202.

The money shall be deposited in the Endowment Fund of the Mission and the interest of the same shall be used for any philanthropic activities as decided by the General Secretary of the Ramakrishna Mission, Belur Math, Howrah, W.B.”

Other assets were bequeathed to her sister [Smt. Kusum Arora], nephew [Sh. Samir Arora] and niece [Smt. Anita Mehra]. The aforesaid persons were also arrayed as respondents in the petition, being the heirs of the testatrix.

5. The appellant No.1 and one Mr. Dayal Chand Das signed as attesting witnesses.

6. At the time of issuing notice on the petition, the Court had directed publication of citations. No objections were received.

7. Before the Court, the following documentary and oral evidence was placed :-

a) The evidence of the appellant No.1 by way of an affidavit dated 21.02.2015 stated *inter alia* that the title documents of the testatrix's immovable property were given by the testatrix personally. He also identified his signatures and thumb impression on the Will, as an attesting witness.

b) The other attesting witness, Mr. Dayal Chand Das, tendered an affidavit of evidence dated 21.02.2015 identifying his signature and thumb impression as well as the signature and thumb impression of the testatrix, on the Will. He stated *inter alia* that the testatrix, the appellant No.1 and he himself had signed the Will in the

presence of each other and at the same time and place. His statement was also recorded before the Court on 21.04.2015.

c) Smt. Kusum Arora, the sister of the testatrix made a statement before the Court confirming that the testatrix had no legal heirs other than the persons mentioned above, and stated that she had no objection to the petition being allowed. An affidavit to this effect was also filed by her. Similarly, Mr. Samir Arora and Smt. Anita Mehra filed affidavits and made statements before the Trial Court.

d) The Sarvadesik Arya Pratinidhi Sabha, to which a bequest has also been made as extracted above, was arrayed as respondent No.2 in the probate petition. Before the Trial Court, a statement was recorded by its authorised representative [Sh. Madhur Prakash] signifying that it had no objection to the grant of letters of administration to the petitioner.

e) The official of the Sub-Registrar was summoned and his evidence was that he had compared the registered Will with the original Will placed in the Court file.

8. None of the witnesses were cross-examined. The Will was exhibited as Ex. PW 2/1.

9. By the impugned judgment, the Trial Court has declined probate of the Will on the finding that the Will appears to be surrounded by the following suspicious circumstances: -

a. It is not mentioned whether the thumb impressions of the deceased are of the right hand or of the left hand.

b. The signatures of the deceased have not been proved to the satisfaction of the Court, as neither were prior signatures produced, nor was a handwriting expert examined.

c. The prior Will of the deceased dated 07.09.2010 [mentioned in the subject Will dated 19.04.2011] was not produced [original or photocopy], nor was any official of the Sub-Registrar examined in respect thereof.

d. The sale deed in respect of the immovable property of the deceased appeared to be only for half undivided share in the property and not for the entire property. The vendors mentioned in the sale deed were also not examined.

e. Although the deceased has directed various bequests [amounting to ₹1,07,50,000/-] to be made out of the sale proceeds, and the residue to be donated to Ramakrishna Mission headquarters, there was no basis disclosed for the belief of the testatrix that the property would fetch more than ₹1,07,50,000/-. Further, the movable properties mentioned in the Will were not properly described.

10. Having heard learned counsel for the petitioners, I am of the view that the judgment of the Trial Court is entirely unsustainable. Probate was sought by the named executor and both the attesting witnesses testified before the Court. The Will was not contested by any party, including the heirs of the testatrix. In the judgment of this Court in *Smt. Shilpa Rana vs. State (NCT of Delhi)* [FAO 218/2017, decided on 15.05.2017], the Court noted that the execution of the Will had been proved by affidavit of evidence of the attesting witnesses and the evidence of the official of the Sub-Registrar wherein the Will was registered. This Court therefore reversed the judgment of the Trial Court dismissing the petition for grant of letters of administration with the Will annexed.

11. The Trial Court has completely misdirected itself in identifying the alleged suspicious circumstances. Each of the said circumstances found by the Trial Court are dealt with below: -

a. Mr. Dayal Chand Das, one of the attesting witnesses of the Will, in his affidavit of evidence dated 21.02.2015 [Ex. PW2/2] clearly identified, at the points which were marked as F-1 to F-6, the thumb impressions of the testatrix and verified that they were the right thumb impressions.

b. The signatures of the testatrix were identified by Mr. Dayal Chand Das. Being a registered Will, the official from the office of the Sub-Registrar had also testified that the signature on the original Will matched the signature on the Registrar's record. Further, there was no dispute as to the signature being that of the deceased. In these circumstances, there was no requirement of producing other writings for comparison, or examining a handwriting expert.

c. The observations of the Trial Court regarding production of the prior Will of the testatrix, mentioned in the Will dated 19.04.2011, are also beyond the requirements of the case. The existence, or otherwise, of a prior Will was not a fact in issue in the proceedings for probate of the subsequent Will. If the propounders of a subsequent Will succeed in proving it, the prior Will is rendered ineffective. However, the failure to produce or prove the prior Will does not disentitle the applicant from seeking probate of the subsequent Will.

d. Although the question of title to the property mentioned in the Will is not germane to probate proceedings, the Trial Court has failed to notice that the immovable property in question was purchased by

the testatrix by means of two separate registered sale deeds, each of which pertained to 50% share in the property. The registered sale deeds in respect of entirety of the property (and not just 50%) were thus on the record of the Trial Court. There is no foundation for the Trial Court to infer a suspicious circumstance from the non-production or non-examination of the vendors. In any event, the grant of probate does not establish title of the testator or the legatee, but only the due execution of the Will. This is evident, *inter alia*, from the judgments of the Supreme Court in *Elizabeth Antony vs. Michel Charles John Chown Lengera* (1990) 3 SCC 333 [paragraph 9], *Delhi Development Authority vs. Gurshaney (Mrs.) & Anr.* (2003) 7 SCC 301 [paragraph 8], *Krishna Kumar Birla vs. Rajendra Singh Lodha* (2008) 4 SCC 300 [paragraphs 57 and 67] and *Pasupati Nath Das (Dead) vs. Chanchal Kumar Das (Dead) by Legal Representatives & Others* (2018) 18 SCC 547 [paragraph 14].

e. The valuation of the immovable property by the SDM vis-à-vis the bequest made in the Will also ought not to have raised such a suspicion in the mind of the Trial Court. In the normal course, valuations of properties may change with time and the testator's expectation regarding the valuation of the estate may or may not be met. Similarly, the specifications of properties owned by the testator, particularly movable properties, may change. However, these are matters which would arise in the course of execution of the estate and need not generally detain the Court at the stage of grant of probate. In any event, during the pendency of this appeal, the appellants have also placed on record a valuation of the property by a registered valuer

dated 23.04.2019, which assesses the valuation at over Rs.1.3 crores, thus capable of meeting the bequests made in the Will.

12. The purpose of probate proceedings, as laid down by the Supreme Court in *Chiranjilal Shrilal Goenka vs. Jasjit Singh* (1993) 2 SCC 507 is as follows:-

“..... Therefore the only issue in a probate proceedings relates to the genuineness and due execution of the will and the court itself is under duty to determine it and preserve the original will in its custody. The Succession Act is a self-contained code insofar as the question of making an application for probate, grant or refusal of probate or an appeal carried against the decision of the probate court. This is clearly manifested in the fascicule of the provisions of the Act. The probate proceedings shall be conducted by the probate court in the manner prescribed in the Act and in no other ways. The grant of probate with a copy of the will annexed establishes conclusively as to the appointment of the executor and the valid execution of the will. Thus it does no more than establish the factum of the will and the legal character of the executor. Probate court does not decide any question of title or of the existence of the property itself.”

This cardinal principle appears to have been missed completely by the Trial Court.

13. For the reasons aforesaid, the petitioner before the Trial Court was entitled to succeed in obtaining probate of the Will of late Smt. Sarla Mehra dated 19.04.2011. The judgment of the Trial Court is therefore set aside. The probate will be issued on furnishing a bond alongwith a surety, and payment of requisite court fees to the satisfaction of the Trial Court.

14. List before the Trial Court on 24.10.2019 for further proceedings in compliance of this order.

15. The appeal stands allowed in the aforesaid terms. No order as to costs.

16. The Trial Court record be sent back.

PRATEEK JALAN, J.

OCTOBER 10, 2019

“

