

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

% **Date of decision: 25th November, 2019**

+ **TEST.CAS. 84/2016**

UJJWAL KAPOOR

..... Petitioner

Through: Mr. Suresh K. Beri, Adv.

versus

STATE & ORS.

..... Respondents

Through: Ms. Ayushi Chaudhary for Ms.
Niddhi Raman, Adv. for R-1.

Mr. Shivendra Singh and Mr. Udai
Rathore, Advs. For R-2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This petition (i) under Section 276 of the Indian Succession Act, 1925 for grant of probate in respect of the last Will of the deceased Man Mohan Lal Khanna, S/o Late Shri I.D. Khanna, R/o A-1/287, Safdarjung Enclave, New Delhi – 110 029; and, (ii) under Section 278 of the Indian Succession Act for grant of Letters of Administration of properties of the deceased Man Mohan Lal Khanna in respect of which no bequest has been made in the Will, is ripe for final hearing.

2. The deceased Man Mohan Lal Khanna, Hindu by religion, is pleaded to have died on 18th March, 2016 leaving a Will dated 16th April, 2012, executed on 28th April, 2012, naming the petitioner as one of the supervisor of the execution of the Will.

3. It is pleaded that the deceased Man Mohan Lal Khanna was not married and had no children and is survived by the petitioner as his sister

and respondent no.2 Kamal Kishore Khanna as his brother and only natural heirs.

4. The petition came up before this Court first on 18th October, 2016 when the counsel for the petitioner stated that “since there is no executor in the Will, the present petition may be treated as a petition for grant of letters of administration”. Notice of the petition was ordered to be issued to the respondent no.2 Kamal Kishore Khanna and citation ordered to be published. The respondent no.2 Kamal Kishore Khanna appeared through Advocate and sought time to file objections. The order dated 12th April, 2017 records that citation ordered to be published had been published. The respondent no.2 Kamal Kishore Khanna filed objections by way of IA No.5061/2018 and also filed IA No.5062/2018 under Order I Rule 10 of the Code of Civil Procedure, 1908 (CPC) seeking impleadment of Anup Khosla and Mrs. Neil Khosla, the named executors of the Will of the deceased Man Mohan Lal Khanna and which executors were stated to be alive. Vide order dated 20th May, 2019, IA No.5062/2018 was allowed and Anup Khosla and Mrs. Neil Khosla were impleaded as respondents no.3&4 to the petition.

5. On 3rd July, 2019, the counsel for the respondent no.2 Kamal Kishore Khanna and the counsel for the respondents no.3&4 Anup Khosla and Mrs. Neil Khosla stated that none of the respondents had any objection to the probate sought by the petitioner. The counsel for the petitioner also, on 3rd July, 2019 stated that the petitioner had filed the affidavit of one of the attesting witnesses to the document claimed to be the Will, of which probate was sought. It was however observed in the order dated 3rd July,

2019 that “the petitioner has to prove the document claimed to be the Will as the validly executed last Will of the deceased Man Mohan Lal Khanna in accordance with law before this Court and inspite of no objection stated to have been given, probate cannot be granted on consent”. The petitioner was accordingly directed to file affidavits by way of examination-in-chief of all her witnesses within four weeks and the matter posted before the Joint Registrar on 8th August, 2019 for recording of statements of the said witnesses and before this Court for today.

6. The order dated 25th September, 2019 of the Joint Registrar records that the petitioner had examined herself as PW1 and one Pankaj Agarwal, claimed to be the attesting witness to the document claimed to be the Will, as PW2 and the respondent no.1 State had opted not to cross-examine the said witnesses and none appeared for respondents no.2 to 4 and the evidence of the petitioner stood concluded.

7. The petitioner has proved the Death Certificate of Man Mohan Lal Khanna as Ex.PW1/1. Ex.PW2/1 has been endorsed on the document claimed to be the Will of deceased Man Mohan Lal Khanna during the evidence of PW2 Pankaj Agarwal. The typed Will contains the date of execution thereof of 16th April, 2012 but the last page thereof along the signatures purportedly of the deceased Man Mohan Lal Khanna bears the date in hand of 28th April, 2012 and the document is purported to be witnessed by Sanjay Dharam Saktu and by Pankaj Agarwal.

8. A Will, per Section 63 of the Indian Succession Act read with Section 68 of the Indian Evidence Act, 1872 can be proved only by the attesting witness thereof. I have thus perused the affidavit by way of

examination-in-chief of PW2 Pankaj Agarwal, the only purported attesting witness of the document claimed to be the Will, examined by the petitioner. The said Pankaj Agarwal, appearing as PW2, in his affidavit by way of examination-in-chief on which Ex. PW2/A has been put, has deposed as under:-

- “1. I say that I am one of the witnesses in the Will dated 16.4.2012, executed on 28.4.2012, of Shri Man Mohan Lal Khanna, S/o Late Shri I.D. Khanna, R/o A-1/287, Safdarjung Enclave, New Delhi – 110029, which is already exhibited as Ex.PW-1/1.*
- 2. I say that on 28.4.2012 Late Shri Man Mohan Lal Khanna was in his sound state of mind.*
- 3. I say that the above Shri Man Mohan Lal Khanna read and understood his Will and signed on his above Will before me at point ‘A’ and I signed the Will Ex. PW-1/1 at point ‘C’ and other witness Shri Sanjay Dharam Saktu signed at point ‘B’ and we two witnesses have also signed on the above Will before him and before each other.*
- 4. I say and submit that the deponent is tendering this affidavit before this Hon’ble Court as my statement-in-chief and the same may please be read as part of my evidence.”*

9. The aforesaid Pankaj Agarwal appeared before the Joint Registrar as PW2 on 25th September, 2019 and deposed as under:-

“I tender my evidence by way of affidavit. Same is Ex.PW-2/A bearing my signatures at points A & B. I rely upon the document i.e. Will dated 24.08.2012, which is Ex.PW2/1 (mentioned as PW1/1 in the affidavit).”

10. A perusal of the document claimed to be the Will, on which as aforesaid Ex.PW2/1 has been endorsed, however does not have any point 'A' on which Pankaj Agarwal in his affidavit deposed the deceased Man Mohan Lal Khanna to have signed or point 'C' where as per the said affidavit by way of examination-in-chief Pankaj Agarwal claimed to have signed or point 'B' where the other attesting witness Sanjay Dharam Saktu was deposed to have signed.

11. Affidavits by way of examination-in-chief are prepared in the office of the Advocate and signed in the same office or before the Oath Commissioner. At that point of time, the document sought to be proved is not before the deponent; thus the reference in the affidavit by way of examination-in-chief to the document sought to be proved by way of exhibit mark and to signatures thereon by way of points 'A', 'B' and 'C' is without the document being before the deponent of affidavit by way of examination-in-chief. The endorsements and points are required to be put on the document when the deponent of the affidavit by way of examination-in-chief appears before Court/Commissioner/Joint Registrar for tendering the said affidavit by way of examination-in-chief into evidence. The counsel for the petitioner while tendering the affidavit by way of examination-in-chief of Pankaj Agarwal into evidence, though put Ex.PW2/1 on the document claimed to be the Will but did not put points 'A', 'B' and 'C' deposed in the affidavit by way of examination-in-chief, on the document. It is evident that when PW2 Pankaj Agarwal appeared before the Joint Registrar to tender his affidavit by way of examination-in-chief into evidence, the document claimed to be the Will was not shown to him and he was not asked to identify the signatures thereon.

12. Resultantly, the signatures of the deceased or of PW2 Pankaj Agarwal or of the other attesting witness Sanjay Dharam Saktu remain unidentified and axiomatically the document claimed to be the Will does not stand proved.

13. The counsel for the petitioner, faced therewith first contended that it is a technical error. However on being asked, whether not the error, even if technical, is fatal, he states that the fault is of the Court Master in not putting the points 'A', 'B' and 'C' at the relevant places on Ex.PW2/1. No merit is found in the said contention either. It is the responsibility of the Advocate, while examining the witness in chief before the Court, to show to the witness the original document claimed to be the Will from the Court file and/or put questions to the witness with respect to signatures on the document. Had such an exercise been carried out, then the endorsement of points relating to signatures contained in the affidavit by way of examination-in-chief would have been made either by the Advocate examining the witness or by the Court Master. The statement got recorded by the counsel for the petitioner of PW2 Pankaj Agarwal as reproduced above does not show the counsel for the petitioner to have done the needful.

14. Now the counsel for the petitioner states that it is he who has committed the mistake.

15. The mistake being of the Advocate for the petitioner, it is not deemed appropriate to penalize the petitioner as a litigant therefor, though the counsel for the petitioner is cautioned to be careful in future.

16. Considering the fact that none is opposing the relief sought and further considering that there is else a ring of truth to the claim, it is

also not deemed necessary to ask the petitioner to re-examine Pankaj Agarwal.

17. Overlooking the aforesaid mistake of the counsel for the petitioner, the petitioner is found to have proved document Ex.PW2/1 to be the validly executed last Will of deceased Man Mohan Lal Khanna.

18. The petitioner, though besides seeking probate/Letters of Administration with copy of the Will annexed, has also sought Letters of Administration with respect to the estate of which no Will has been made, has not given any particulars of the said estate. The respondent no.2 Kamal Kishore Khanna however in objections by way of IA No.5061/2018 which though were not pressed and abandoned, is found to have pleaded the deceased to have also left monies in fixed deposits. The petitioner, to be entitled to Letters of Administration with respect to the estate of which no Will has been made, would be required to first give particulars of the said estate and valuation thereof and which the petitioner is permitted to do within three months of today.

19. The petition is thus allowed.

(A) Probate/Letters of Administration with respect to estate, of deceased Man Mohan Lal Khanna, S/o Late Shri I.D. Khanna, R/o A-1/287, Safdarjung Enclave, New Delhi – 110 029 who died at Delhi on 18th March, 2016 , subject matter of the Will Ex.PW2/1 with Ex.PW2/1 annexed thereto is ordered to be issued to the petitioner subject to the petitioner depositing appropriate court fees/stamp duty and submitting

Administration Bond of the value of the property bequeathed under the Will Ex.PW2/1 with one surety for the like amount.

- (B) Letters of Administration with respect to the estate of Man Mohan Lal Khanna of which no Will has been made, is also ordered to be issued to the petitioner, subject to the petitioner depositing the requisite stamp duty/court fees with respect thereto and furnishing Administration Bond of the value of the said part of the estate with one surety of the like amount.

20. The petition is disposed of.

RAJIV SAHAI ENDLAW, J.

NOVEMBER 25, 2019
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