

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: December 09, 2019

+ TEST.CAS. 84/2018

SMT. BHARATI SHARMA

..... Petitioner

Through: Mr. Jagdeep Singh Bakshi,
Mr. Abhishek Mohan and Mr. Amitesh
Singh Bakshi, Advs.

versus

THE STATE & ORS.

..... Respondents

Through: Mr. Anya Singh, Adv. for R-1 / State.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. This is a petition filed by the petitioner under Section 276 of India Succession Act, with the following prayers:-

“It is therefore, most respectfully prayed that this Hon'ble Court may most graciously be pleased to:

a) Grant in favour of the Petitioner, Letters of Administration, with the WILL dated 30.12.2013 annexed thereto, in respect of the estate of the deceased, namely Smt. Susheela Ambike;
a) Pass any other order in favour of the Petitioner as is deemed fit and proper by this Hon'ble Court.”

2. In substance, the petitioner is seeking Letters of Administration, with the WILL dated December 30, 2013 in respect of the estate of the deceased, namely Smt. Susheela Ambike.

3. It is the case of the petitioner that deceased Susheela Ambike was a Hindu. Her husband Late Lt. Col. Bhalchandra Narayan Ambike had died during her life time on April 08, 1993. That the only child of Susheela Ambike, a son, namely Ambike Mukund Bhalchandra had died a bachelor on November 16, 1978 in an air crash. It is the case of the petitioner that the said deceased Susheela Ambike left behind (i) Mrs. Vijaya Mulay-respondent No.2, who is her sister; (ii) Mrs. Suhasini Mulay-respondent No.3 (niece); (iii) Dr. Shree Mulay-respondent No.4 (niece) and (iv) Bharati Sharma (niece)- petitioner in the present petition. The petitioner certifies that to the best of her knowledge, the deceased did not leave behind any other legal heir except as stated above (Exh.PW3/C).

4. It is the case of the petitioner that Susheela Ambike, the deceased during her life time executed her last Will dated December 30, 2013. The said Will was duly registered with the office of Sub-Registrar V, New Delhi as Document No. 1458 in Book No. 3, Vol. No 2,034 on pages 118 to 120 on December 31, 2013. The said Will in original is also filed along with the petition (PW 1/1).

5. It is her case that the said registered Will dated December 30, 2013 was validly executed by Susheela Ambike when she was of sound disposing mind. It was executed voluntarily without any force, fraud or undue influence of any type whatsoever. The execution of the said Will dated December 30, 2013 was duly attested by the attesting witnesses namely Shri K. Gopala Krishnan, S/o Late Shri K.A.G. Menon, R/o 1st Floor, T Park

Avenue, Maharani Bagh, New Delhi - 110065 and Ms. Preeti Johri, W/o Shri Chandra Kumar Johri, R/o 58, First Floor, Block I, Charmwood Village, Suraj Kund Haryana-121009. The testatrix and the said two witnesses all signed at the same time.

6. It is the case of the petitioner that the deceased Susheela Ambike left behind the following movable and immovable properties (Ex.PW3/F):

- i) House No 48/7 in Ex- Servicemen's Colony Paud Road Pune 38 Maharashtra;
- ii) Flat No. 12-B, K Block, Saket, New Delhi -110017;
- iii) Bank Account No. 7123 in Bank of India, Saket Branch, New Delhi -110017 with a credit balance of ₹16,93,430.46;
- iv) Bank Account No. 11PC Canara Bank Indraprastha College Extension, Delhi with a credit balance of ₹5,56,543.33;
- v) Bank Account No. 342, Bank of Maharashtra Paud Road, Pune 38 with a credit balance of ₹39,693.49 (Petitioner / parties do not seek the assistance of the Court in respect of this account).
- vi) Deposit in NSS Account No. 2502 New Delhi Post Office, Gol Dak Khana, New Delhi with a credit balance of ₹11,42,982/-.
- vii) Investments in mutual funds and shares and any other financial instruments in the custody of Deepak Sethi, R/o H-17C Saket, New Delhi-110017 and Ms. Rekha Hodarkar, R/o T-9, Seeta Apartments, Mayur Colony, Kothrud Pune-411038. Value of the above mutual funds / shares in respect of which assistance of the Court is required are ₹3,00,000/- approximately.
- viii) Jewellery, furniture, gadgets and household gadgets.

7. It is the case of the petitioner that as per the Will dated

December 30, 2013, Susheela Ambike, deceased has bequeathed:-

i) the Flat No 12-B, K Block Saket, New Delhi -110017 in favour of the petitioner exclusively, absolutely and forever;

ii) House No 48/7 in Ex- Servicemen's Colony Paud Road Pune-38, Maharashtra in favour of respondent No.3. This property already stands transferred in favour of respondent No.3 as per the Will of the testator;

iii) Credit Balance in NSS Account No. 2502, New Delhi Post Office, Gol Dak Khana, New Delhi in favour of respondent No 4, the amount has been withdrawn and handed over to respondent No.4 as per the WILL;

iv) Credit balances in Bank Account No. 7123 in Bank of India, Saket Branch, New Delhi -110017, credit balance of ₹16,93,430.46/-; Bank Account No. 11PC Canara Bank, Indraprastha College Extension, Delhi, credit balance of ₹5,56,543.33/-; Bank Account No. 342, Bank of Maharashtra Paud Road, Pune-38 credit balance of ₹ 39,693.49/-; equally in favour of the petitioner, respondent No. 3 and respondent No. 4;

v) Investments in mutual funds and shares and any other financial instruments equally in favour of the petitioner, respondent No. 3 and respondent No. 4, presently valued at ₹3,00,000/- approximately;

vi) Jewellery, furniture, gadgets and household gadgets equally in favour of petitioner, respondent No. 3 and respondent No. 4. No value. It is stated that the petitioner, respondent Nos.3 and 4 have also distributed amongst themselves the Jewellery, furniture,

gadgets and household gadgets. The assistance of the Court is not required in respect of the said property.

8. It is the case of the petitioner that the petitioner is one of the beneficiaries of the estate of the deceased. The sisters of the petitioner, respondent Nos. 3 and 4 are also beneficiaries of the estate of the deceased and they have been arrayed as respondent Nos. 3 and 4 in the present petition.

9. The deceased had appointed Dr. Savitri Sawhney, W/o Brig. V.K. Sawhney, R/o A 1/20 Freedom Fighter's Enclave, Neb Sarai, New Delhi-110068 as the executor of the Will in question and had also left her original Will with her. The petitioner made a request to the said Dr. Savitri Sawhney to execute the Will in question vide a letter dated October 12, 2018. The said Dr. Savitri Sawhney vide her letter dated October 16, 2018 (Ex.PW 2/1) showed her inability to execute the Will and handed over the original Will to the petitioner.

10. It is the case of the petitioner that as the named Executor has shown her inability to act, the petitioner being the beneficiary of the Will has presented the present petition for grant of Letters of Administration with the Will annexed thereto.

11. In the present petition, notice was issued to the State on December 12, 2018 and citations had been published in the newspaper 'The Statesman' (English) Delhi Edition and 'Dainik Bhaskar' (Hindi) Delhi edition. Since the properties are also situated in Maharashtra, citations were also published in 'Free Press Journal' (English) Maharashtra Edition and 'Navbharat' Maharashtra Edition and 'Mumbai Lakshadweep' (Marathi)

Maharashtra edition. Objections have not been received despite publication of the citation. Notice was duly served on the State and Valuation report has been filed by the SDM (Hauz Khas) with respondent to Delhi property. Affidavits of 'No Objections' dated December 27, 2018 have been filed by other surviving legal heirs i.e. Vijaya Mulay-respondent No.2 (since deceased), Ms.Suhasini Mulay – respondent No.3 and Dr. Shree Mulay-respondent No.4 to the effect that they do not have any objection if the relief as prayed for, is granted in favour of the petitioner.

12. The petitioner also entered the witness box and tendered the affidavit (Ex.PW3/X) along with documents exhibited as Ex.PW3/A to Ex.PW3/G.

- (i) Ex.PW3/A - Death certificate of Susheela Ambike;
- (ii) Ex.PW3/B – Death certificate of Bhalchandra Narayan Ambike;
- (iii) Ex.PW3/C – List of legal heirs;
- (iv) Ex.PW3/D – Death certificate of Vijay Mulay;
- (v) Ex.PW3/E - Amended memo of parties;
- (vi) Ex.PW3/F – Estate left behind by the deceased;
- (vii) Ex.PW3/G – Affidavit of the petitioner dated December 01, 2018.

13. It is noted Dheeraj Kumar, Record Keeper from the office of Sub-Registrar-V Mehrauli had also appeared as PW4. He proved the registration of the Will dated December 30, 2013 which is exhibited as Ex.PW1/1. Ms. Preeti Johri, one of the attesting witness on the Will also appeared as PW1, who tendered her affidavit Ex.PW1/X. She stated that the executants signed the

Will at the time of signing the Will. Thereafter she had put her signatures. Thereafter another witness namely K. Gopala Krishnan signed the Will. Later on, the executant, she and K. Gopala Krishnan had put their thumb impression before the Registrar. She also stated, she verified the petition, which is duly supported by her affidavit Ex.PW1/2. I note, Dr. Savitri Sawhney (executor) appeared as PW2, and tendered her affidavit as Ex.PW2/X along with document exhibited as PW2/1, which is a letter dated October 16, 2018 whereby she has handed over the original of the Will to the petitioner and stated that because of her ill health, she is unable to carry the work of the Will.

14. In view of the above, it is clear that the respondent No.2 (since deceased) the respondent Nos.3 and 4, have filed their no objections for grant of Letters of Administration in favour of the petitioner to give effect to the wish and desire of Late Susheela Ambike as mentioned in her last Will dated December 30, 2013 (Ex.PW1/1). That apart, the Will dated December 30, 2013, as registered with the office of Sub-Registrar-V, Mehrauli on December 31, 2013, has been proved by the attesting witness namely Ms. Preeti Johri (PW-1) and by the record keeper namely Sh. Dheeraj Kumar (PW-4). It is also proved that the executor, PW 2 Dr. Savitri Sawhney has vide Ex.PW2/1 has renounced her executorship, which made the petitioners file this petition for grant of Letters of Administration with Will.

15. So, in view of the fact that there is no opposition, the validity of Will dated December 30, 2013 Ex. PW-1/1 has been proved. The testator was in sound disposing mind at the time of

executing the Will. The Court is satisfied that the Will dated 30th December, 2013 (Ex.PW1/1) is the true and last Will of Late Susheela Ambike. There is no impediment for grant of Letters of Administration with Will annexed. During the course of hearing, it was the submission of Mr. Bakshi that with regard to property being Flat No.12-B, K Block, Saket, New Delhi-110017, the petitioner being the beneficiary, she be exempted from filing the administration bond with surety. In fact, he had relied upon the judgment of the Coordinate Bench of this Court in the case of *Rita Narang & Anr. v. The State & Ors., Test Case No.11/2011* decided on August 07, 2015 and so also in the case of *Neeraj Chandra & Anr. v. State & Ors., TEST. CAS. 81/2010*, decided on March 10, 2017.

16. The petition is allowed and the Letters of Administration with Will dated 30th December, 2013, (Ex. PW 1/1) annexed thereto, in respect of the estate of Late Susheela Ambike is granted in favour of the petitioner subject to the petitioner furnishing the requisite Administration Bond / Surety Bond / and paying the Court fee. The petitioner being the beneficiary with regard to the Flat No.12-B, K Block, Saket, New Delhi-110017, she is exempted from furnishing the requisite Administration Bond / Surety Bond, but shall furnish a Personal Bond in that regard.

17. The petition is disposed of.

V. KAMESWAR RAO, J

DECEMBER 09, 2019/ak