

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO 10497 of 2014 (O&M)

Date of Decision: November 26, 2021

Varun and another

...Appellants

Versus

Ladli Jiwan Sharma and others

... Respondents

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : Mr. Manoj Kumar Sood, Advocate
for the appellants.

Mr. Akshay Jindal, Advocate
for respondents No. 1 and 2.

FATEH DEEP SINGH, J. (Oral)

This appeal by the appellants Varun Sharma and Lata Sharma is directed against judgment dated 29.09.2014 of the Court of learned Additional District Judge, Gurugaon, whereby, through the impugned findings a petition under Sections 276 and 278 of the Indian Succession Act for Probate/letter of Administration of Will stood dismissed.

Heard Mr. Manoj Kumar Sood, Advocate for the appellants and Mr. Akshay Jindal, Advocate for respondents No. 1 and 2 and perused the records.

The brief background is that one Shri Om Jiwan Sharma who happened to be an advocate practising at Gurugaon died on 07.06.2011. The applicants/appellants claiming that the deceased had executed a Will dated 24.02.2008 which was subsequently registered in the Office of Sub-Registrar, Gurugaon on 03.03.2012 vide registration No. 1491. Thus, the applicants/appellants were beneficiaries of the said Will. It is not displaced that the deceased had one son Deepak Nirmal @ Deepak Sharma @ Raju who died during his lifetime and left behind a son applicant/appellant Varun Sharma whereas applicant/appellant Lata Sharma happened to be the daughter of the deceased and had no interest adverse to them of the co-applicant/appellant. Respondent No. 2 Ladli Jiwan Sharma and respondent No. 3 Veena Kumari Sharma claiming to be the daughters of the deceased Shri Om Jiwan Sharma

objected to this claim and set up plea that neither the probate nor the latter of administration can be issued on the basis of the said Will.

The learned trial Court framed the following issues:-

1. Whether the petitioners are entitled for grant of Probate? OPP.
2. Whether the petitioners have no locus standi or cause of action to file the present petition ? OPR.
3. Whether the petition is not maintainable? OPR.
4. Relief.

The petitioner examined Smt. Lata Sharma as PW1 who tendered her affidavit Ex. PW1/A, Suresh Kumar, Public Relation Officer as PW2, MC Dawar, Deputy Manager, State Bank of Patiala, Gurgaon as PW3, Mukesh Kumar Techandani, Chief Manager, Allahabad Bank Adhichini as PW4, Hira Lal, Manager, Syndicate Bank as PW5, Dharambir, Sr. Manager,

Syndicate Bank as PW5 (wrongly written as PW5/1), Man Singh Chauhan, Syndicate Bank, Palwal as PW6, Mohit Kumar ARC Office of Sub Registrar Gurgaon as PW7 and Sham Jiwan Pathak as PW8 and produced on record attested copy of Will Ex.PW1/B and PW7/1, attested copy of legal notice Ex.P2, attested copy of ledger Ex.PW2/A, attested copy of statement of transaction Ex.PW3/A, attested copy of account opening form Ex.PW4/A, statement of account Ex.PW4/B, copy of account opening form Ex.PW5/A, statement of account Ex.PW5/B, LIC receipts Ex.PL, Ex.PM, Ex.PN, status report of policy Ex.PO, attested copy of decree sheet of petition under Section 13 of Hindu Marriage Act as Ex.PQ and thereafter closed the evidence.

Respondents examined Ladli Jiwan Sharma as DW1 and produced on record attested copy of voter Card of Deepak Nirmal as Ex.DW1/A, attested copy of certificate of matriculation of Deepak Nirmal as Ex.DW1/B and attested copy of certificate f Hindi Sahitya Sammelan, Allahabad as Ex.DW1/C and closed

the evidence. That is how, the impugned findings had subsequently passed.

Appreciating the submissions of the two sides Section 276 of the Succession Act 1925 (in short, **the Act**) deals with application for probate and letters of administration and prescribed procedure for its filing and processing. Section 279 of the Act lays down the procedure which ensures the manner of filing and processing of petitions for letters of administration. It is well settled preposition of law that any legatee in the absence of executor of a Will is entitled to apply for grant of letters of administration under Section 232 of the Act and for which no limitation has been prescribed.

In the impugned findings, the learned trial Court has fell into an error and purely on the grounds that since none was appointed as executor of the Will had declined the prayer and dismissed the petition which is highly uncalled for. Section 234 of the Act clearly enumerates that mere death of an executor or administrator of Will having died cannot establish the devolution

of the estate of the deceased upon heirs. Section 234 of the Act ensures that where there is no executor or residual legatee or representative of the residual legatee or declines or incapable of acting or cannot be found persons who would be entitled to the administration of the estate having a beneficial interest may be admitted to prove the Will and letters of administration may be granted to him or them accordingly.

Since the applicants claim to be a grand son and daughter of deceased Om Jiwan Sharma and have claimed on the basis of Will to be the beneficiary, thus, it would be too preposterous to deny them such a prayer unless and until there is over whelming evidence otherwise. The Will has been proved on the records as PW1/B and PW7/1 and its due registration has been proved by Mohit Kumar ARC Office of Sub Registrar Gurgaon as PW7 whereas on the other hand the respondents have failed to rebut the Will much less the *locus standi* of the applicants/appellants to lay claim to such an estate. It is well settled proposition of law as has been laid down in **K.M.**

Vgarghese and others Vs. K.M. Oommen and others AIR

1994 Ker 85 that the Court is only supposed to see and determine whether the Will has been voluntarily made by the testator out of his free volition appropriately executed and attested in accordance with law as well as the fact that the testator had the capacity to execute the same and it needs to be reiterated here that under the law while granting letter of administration or probate the Court is not supposed to adjudicate upon the title of the property detailed in the Will. Furthermore, if in case of non examination of attesting witnesses of the Will when sufficient evidence has come about as to the reason for non-examination of the attesting witness but with the passage of time might have died or are untraceable the propounder of the Will could prove the execution of the Will by adducing other evidence. Reliance has also been placed on

Cherichi Vs. Ittianam AIR 2001 Ker 2000.

From this unrebutted evidence what one could decipher is that it is a fit case where though a prayer for grant of

probate has been made, this Court deems it expedient that letters of administration be issued to the applicants/appellants under the provisions of law upon necessary compliance under the Act as entire evidence of the applicants/appellants has remained unrebutted.

In the light of the same, the instant appeal is allowed.

November 26, 2021	(FATEH DEEP SINGH)
amit rana	JUDGE
Whether reasoned/speaking	: Yes/No
Whether reportable	: Yes/No