



* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Reserved on: 25th August, 2022
Pronounced on: 26th September, 2022

+ TEST.CAS. 28/2005

D.P.SACHDEVA

S/o Late Sh. M. Sachdeva
R/ o - A-272, 2nd Floor,
Defence Colony,
New Delhi - 110024.

..... Petitioner

Represented by: Petitioner in person (through
video conferencing).

versus

1. **STATE GOVT., OF NCT OF DELHI**
2. **MR. GIAN PRAKASH CHADHA**
S/o Late Smt. Basant Kaur,
and Late Sh. Subedar Shadi Lal Chadha,
R/ o- A-299, Defence Colony,
New Delhi – 110024
3. **(a) MRS. SULKSHANA CHADHA (WIDOW)**
W/o Late Ram Prakash Chadha
(b) COL. MUKESH CHADHA (SON)
S/o- Late Ram Prakash Chadha,
(c) COL. RAKESH CHADHA (SON)
S/o- Late Ram Prakash Chadha,
R/ o- A-299, Defence Colony,
New Delhi -110024
4. **MR. GUR PRASHAD CHADHA**
S/o Late Smt. Basant Kaur,
and Late Sh. Subedar Shadi Lal Chadha,
R/o- A-299, Defence Colony,
New Delhi- 110024
5. **(a) MR.SANJEEV CHADHA (SON)**
S/o Sh. Prakash Lal Chadha



R/o-147, Sainik Vihar, Pitam Pura,
New Delhi – 110034

(b) MS. ANJU CHADHA (DAUGHTER)

D/o Sh. Prakash Lal Chadha,
R/o-147, Sainik Vihar, Pitam Pura,
New Delhi-110034

(c) MRS. RITA VIJ (DAUGHTER)

D/o Sh. Prakash Lal Chadha,
R/o- 71, Sainik Vihar, Pitampura,
New Delhi-110034

(d) MRS. RENU SABHARWAL (DAUGHTER)

D/o Sh. Prakash Lal Chadha,
R/o- 3H/122, Vikas Puri,
New Delhi-110018

(e) MRS. KIRAN SAHNI (DAUGHTER)

D/o Sh. Prakash Lal Chadha,
R/o- WZ-69/1, Meenakshi Garden,
New Delhi-110018

6. (a) SMT. SHALINI CHADHA (WIFE)

D/o - Aftab Chadha,

(b) SH. MAHEN CHADHA (SON)

D/o- Aftab Chadha,

(c) SH. JAI CHADHA (SON)

D/o - Aftab Chadha,

All R/o- B-108, 1st Floor,
Ardee City, Sec - 52,
Gurugram-122011

..... Respondents

Represented by: Mr. Arun Singh & Mr. Rahul
Kumar, Advocates for R-2, 3 &
4.

Mr. S.C. Anand, Advocate for
Mr. Sanjev Chadha, LR of R-5.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G E M E N T

**NEENA BANSAL KRISHNA, J.**

1. The present petition has been filed under Sections 276 and 278 of the Indian Succession Act, 1925 on behalf of the petitioner seeking grant of Probate/Letter of Administration of Will dated 20th May, 1993 of Smt. Basant Kaur.

2. Facts in brief are that Smt. Basant Kaur, wife of Late Subedar Shadi Lal Chadha during her lifetime, executed a Will dated 20th May, 1993, while she was in possession of her mental and physical senses. Smt. Basant Kaur appointed Mr. D.P. Sachdeva, Advocate as the Executor of the said Will dated 20th May, 1993. Smt. Basant Kaur died on 13th December, 1997 and was survived by four sons, namely, Mr. Gian Prakash Chadha, Mr. Ram Prashad Chadha, Mr. Gur Prashad Chadha and Mr. Prakash Lal Chadha and grandson, namely, Mr. Aftab Chadha, who is the son of Late Major Tilak Raj Chadha.

3. Smt. Basant Kaur left the moveable and immovable properties which are as under: -

“Immovable properties: –

1. Plot No. A-299, Defence Colony, New Delhi-110024, measuring about 217 square yards, having built up-to three storeys.
2. Plot No. 9-3C, 138, measuring about 796 square yards at Sainik Co-operative Society Ltd., Defence Colony, Dehradun.

Moveable properties: –

1. Fixed deposit in the band and small quantity of gold which was utilized at the time of the marriage of respondent No.6, the grandson of the deceased Smt. Basant Kaur”



4. The respondent No. 5-Prakash Lal Chadha was deprived of rights, title and interest in the aforesaid properties, since he had taken 3/4th of the property at Kashmeri Gate, Municipal No. 1-225, which belonged to his brothers, namely, respondent Nos. 1 to 4 and had sufficient rental income from the tenants/shopkeepers by letting out the property and he had also received premium (pagri) from the tenants, while renting out property and had taken possession of one room in the said property, wherein the deceased had established a small family temple and spent about Rs. 85,000/- at the time of marriage of the daughter of the respondent No. 5.

5. The petitioner has described the manner in which the properties were to be divided which are as under:

“1. The Ground Floor of the above-said House No. A-299, Defence Colony, New Delhi-110024, shall devolve upon respondent No. 2, less front portion which shall be used for parking of common vehicles. Since there are two gates, the gate along with the adjacent Property bearing No. A-300, be used for parking the car in lawn of respondent No. 2 only, who is presently occupying the ground floor of the said property A-299, Defence Colony, New Delhi.

2. The First Floor of the above-said property bearing No. A-299, Defence Colony, New Delhi shall devolve upon exclusively in favour of the respondent No. 3 who is presently occupying the said portion of the said property.

3. That the Second Floor of the above-said Property No. A-299, Defence Colony, New Delhi shall devolve upon respondent No. 4, who shall have no exclusive right on the terrace of the said floor which shall be commonly used by the respondent Nos. 1, 2 and 3 respectively.

4. That the property situated at Dehradun Plot No. S-3C, 138, measuring about 796 sq. yds. at Sainik Co-operative Society Ltd., Defence Colony, Dehradun, U.P. shall devolve upon the respondent No. 6 who (as per Will) is living in U.S.A. and in



case he did not return to India by end of 1998 the said property shall be equally divided amongst the other respondent Nos. 1, 2 and 3 respectively. However, at present as per the record available and information received respondent No. 6 is in India and has been occupying and having the exclusive possession of the said property at Dehradun.”

6. It is submitted that no other petition for grant of Probate/Letter of Administration in respect of the immovable properties mentioned in the Will has been filed earlier. Mr. D.P. Sachdeva, Advocate, who was appointed as the Sole Executor of Will dated 20th May, 1993 is entitled to be granted Probate/Letter of Administration in respect of her Will. Hence, the present petition has been filed for grant of Probate/Letter of Administration in terms of the Will dated 20th May, 1993.

7. It is further prayed that the Letter of Administration with respect to the immovable properties as described above may be granted in terms of the Will dated 20th May, 1993.

8. **The respondent Nos. 2, 3 and 4** have admitted the contents of petition and have given their “No Objection” to the grant of Probate/Letter of Administration. A Deed of Compromise has also been filed along with no objections/Written Statement.

9. **The respondent No. 5 has not filed any Written Statement/NOC despite due service.** The respondent No. 5 expired and his legal heirs were brought on record, namely, Mr. Sanjeev Chadha (son), Ms. Anju Chadha (daughter), Ms. Rita Vij (daughter), Ms. Renu Sabharwal (daughter) and Ms. Kiran Sahni (daughter), who adopted the objections filed on behalf of the respondent No. 6.



10. **The respondent No. 6 had filed a reply** wherein she took a preliminary objection that the petitioner is acting as a puppet in the hands of respondent Nos. 2, 3 and 4 and the answering respondent has cast aspersions on the petitioner and has taken objections and moved an application under Section 10 of the Code of Civil Procedure, 1908. It was also asserted that the verification of the petition by the petitioner does not comply with the requirements of Order VI Rule 15 of Code of Civil Procedure, 1908. The affidavit annexed with the petition falsely states that it has been drafted under the instructions of legal heirs. It is claimed that as per his understanding, no instructions have been given on behalf of the respondent No. 5. The petitioner has intentionally lied to mislead this Court. It is further asserted that the petitioner is acting as a puppet in the hands of respondent Nos. 2, 3 and 4.

11. Further objections have been taken that the petition has been filed after nearly 7 years and 5 months after the death of the Testatrix and there is no explanation filed for the delay. The petition is *ex facie* barred by limitation, delay and laches.

12. It is claimed that the issue in regard to the Will dated 20th May, 1993 of Smt. Basant Kaur was also subject matter in Probate Case No. 106/1999. The petitioner herein failed to respond to the citation issued in Probate Case No. 106/1999 filed by respondent No. 5 herein and thereby renunciated his Executorship in terms of Section 231 of the Indian Succession Act. The petitioner has no personal interest in the assets of the deceased. By necessary implication, he is covered by Section 231 of the Indian Succession Act. On 06th January, 2003, the following Issue No. 2 was framed in the Probate Case No. 106/1999:



“Whether the Will dated 20.5.1993, propounded by Respondents No. 2 and 3, is valid Will, executed by the deceased Smt. Basant Kaur Chadha, while in sound disposing mind? If so, its effect? OPR.”

13. The answering respondent No. 6 has already filed Suit No. 1292/2003 in this Court which comprehensively covers all three family immovable properties *inter alia* including two family properties mentioned in the present Suit. The present petition would not serve any useful purpose and it is totally superfluous and redundant.

14. It is further asserted that the present petition is *ex facie* incomplete. There is material concealment and mis-statement in the list of properties. It does not cover any of the movable properties mentioned in the Will and it also omits the credit in the pension account of the Testatrix. The respondent No. 6 is seriously prejudiced by such omissions. It covers only two immovable properties and it is silent regarding the third immovable family property at Kashmere Gate mentioned in the alleged Will. The occupation of 3/4th, of property by respondent No. 5 appears to be a pre-existing condition in the Will. Moreover, the petitioner has not undertaken to pay the stamp duty/court fee for the Probate of the Will. The petitioner had instructed the respondent No. 4, Gur Prasad Chadha on 30th September, 2005 to deposit the publication charges which was overheard by respondent No. 5. It is claimed that the stamp duty/court fee is also required to be paid by respondent Nos. 2, 3 and 4. There is material concealment on these aspects.

15. The respondent No 6 has further asserted that there is collusion between the petitioner and the respondent Nos. 2, 3 and 4. On 06th



February, 2003, the respondent Nos. 6 and 5 had moved two parallel applications respectively for farming of additional issues which are as under:

“a. Whether the enforcement of the subject Will is barred by Limitation Delay and Laches?.

b. Whether the enforcement of the subject Will is barred because no Probate or other proceedings, have been filed by Respondents No. 1 to 4, for its enforcement?”

16. The present petition appears to have been collusively filed by the petitioner and respondent Nos. 2, 3 and 4 to overcome the said difficulty.

17. **On merits**, it is asserted by respondent No.6 in her written statement that Smt. Basant Kaur was ordinarily a resident of Punjab and Sind Kshetra Ashram at Haridwar, where she had got a room built from the family earnings. She had kept only one room on the ground floor at Defence Colony, New Delhi for her visits to New Delhi, for family functions or similar reasons. The present petition is totally silent regarding hereditary rights in the said room at Haridwar. However, the Death Certificate of Smt. Basant Kaur is admitted.

18. It is further asserted that Smt. Basant Kaur was not in a fit state of body and mind to execute the alleged Will. It is not signed by the Testatrix. She used to sign as is evident from her bank accounts other documents. The alleged Will is claimed to be fabricated.

19. It is further submitted that the attesting witness in his deposition in Probate Case No. 106/1999 has stated that the Will was read out in English, whereas Late Smt. Basant Kaur did not understand English. Moreover, the Will does not give the address of the petitioner D.P. Sachdeva. The identity of the petitioner as D.P. Sachdeva has to be proved by him.



20. It is further claimed that the names of the legal heirs are correct and but are given without age in the wrong order of seniority concealing the fact that Shri Parkash Lal Chadha was the head of the family. Moreover, all the immovable properties mentioned in Paragraph-5 of the petition are joint family properties. Smt. Basant Kaur was not having any individual income or individual assets of her own till she started getting meager family pension for herself and her dependent children. These correct facts have been brought out by the answering respondent No. 6 in his Suit No. 1292/2003 which has been filed against the petitioner is pending in this Court. It is further submitted that Probate Petition No. 106/1999 is pending in the District Courts in respect of the subject properties. The present petition is claimed to be superfluous and redundant. It is, therefore, submitted that the subject petition may be dismissed with costs.

21. The issues on the pleadings were framed on 30th April, 2014 which read as under:

- “(i) Whether the Will dated 20.5.1993 is a legally valid Will of late Smt. Basant Kaur? OPP.
- (ii) Relief.”

22. Affidavit of evidence of the legal heirs of respondent Nos. 5 and 6 was filed on record, but no evidence was led on their behalf and the evidence of respondent No. 6 was closed *vide* Order dated 19th September, 2016.

23. The respondent No. 6 died on 29th January, 2021 and was survived by his wife-Shalini Chadha and also two sons, namely, Mr. Mahen Chadha and Mr. Jai Chadha, who were impleaded as legal heirs of deceased respondent No.6 *vide* Order dated 06th January, 2022. Legal heirs of respondent No. 6



have submitted their affidavit-cum-No Objection for the grant of Probate to the petitioner.

24. **PW-1-S.K. Sharma, LDC** from the Office of Sub-Registrar-III, Asaf Ali Road, New Delhi deposed that the Will dated 20th May, 1993 executed by Smt. Basant Kaur and the said Will was registered as document serial No. 2543 at page No. 51 to 55 in Volume No. 732 in Book No. III dated 20th May, 1993.

25. **The petitioner in support of his case examined himself as PW-2** and proved his evidence by way of affidavit. The affidavit of evidence is Ex.PW2/1 and bears his signatures at Points A and B on the affidavit. PW-2 proved the Will dated 20th May, 1999 as Ex. PW2-1 which is already Ex.P-1, Sale Deed as Ex. PW2/2 which is already Ex. P-7 and the valuation report as Ex.PW-2/3.

26. No evidence has been led on behalf of respondent No.5 who is the only contesting respondent.

27. **Learned counsel for the petitioner has argued** that the respondent Nos. 2, 3 and 4 have not contested the grant of Probate in favour of the petitioner. Initially, objections had been filed on behalf of the respondent No.6 but on his demise, his legal heirs were brought on record and the matter was compromised and they have given their No Objection to the grant of Probate. Moreover, no evidence whatsoever has been led on behalf of the legal heirs of respondent No. 6. The legal heirs of respondent No. 5 are the only contesting party but they have also neither cross-examined witnesses of the petitioner nor have they led any evidence in support of their objections. The unchallenged testimony of the petitioner and the support



witness thus prove genuineness of the Will and the petitioner is entitled to grant of Probate.

28. **Learned counsel on behalf of the legal heirs of respondent No. 5** has argued that it has come in the evidence that the Will bears the thumb impression of the deceased, Basant Kaur, even though she used to sign as is evident from her bank account documents. Moreover, the Will has been prepared in English, though Smt. Basant Kaur did not know English language. The alleged Will on the face of it is fabricated document.

29. Learned counsel on behalf of the respondent No. 5 has placed reliance on the decision in Pratap Singh & Anr. vs. State & Anr. 173 (2010) DLT 132 (DB), wherein it was observed that when there is no evidence that the Will was prepared on the dictation of testator and the contents of the Will signed by the testator were read over and explained to him in Urdu or in language known to him, then the onus of the appellant to prove medically fit disposition of testator would not stand discharged and it cannot be held that the Will as free from suspicion.

30. Submissions heard. My issue wise findings are as under:

“Issue No. 1:

(i) *Whether the Will dated 20.5.1993 is a legally valid Will of late Smt. Basant Kaur?* **OPP.**

31. The petitioner-D.P. Sachdeva has filed the present petition for grant of Probate in respect of Will dated 20th May, 1993 as he has been appointed as an Executor in respect of the said Will.

32. To prove the assertions, the petitioner appeared as PW2 and has deposed in his affidavit of evidence Ex.PW2/1 that during the life time, Smt.



Basant Kaur executed a Will dated 20th May, 1993 which was drafted by Mr. M.L. Sharma, Advocate, Patiala House Courts. It was duly registered *vide* Serial No. 2543 dated 20th May, 1993 and the Will Ex.PW2/1. It is further deposed by him that when the Will was drafted by Mr. M.L. Sharma on instructions of Smt. Basant Kaur on 20th May, 1993, Mr. M.L. Sharma had after drafting the Will, had explained the contents of the Will in Vernacular language to Smt. Basant Kaur. She was in sound, deposing mind and in full senses at that time. It is further deposed that the Will was typed on manual typewriter at Patiala House Courts, New Delhi. In the said Will, the petitioner was appointed as the Executor. It is further explained by him that he was also a resident of Defence Colony and had met Smt. Basant Kaur a number of times in locality/Defence Colony Club. He identified her signatures on the Will and deposed that she has signed in the presence of other witnesses. The witness has signed at Point A and B, while the other attesting witness, namely, Mr. M.L. Sharma, Advocate has signed at Point B on the Will Ex.PW2/1. The copy of the Lease Deed of Property No. A-299, Defence Colony, New Delhi as Ex. P1/2. The valuation report is Ex. PW1-3. After the Will was prepared, it was handed over to him by respondent No. 4-Gur Prasad Chadha, one of the beneficiary under the Will, in the first week of May, 2005 for filing the Probate case in this regard. The respondent No. 4, Gur Prasad Chadha had informed him that the Will was traced by him.

33. It is further deposed by him that the respondent No. 5 had applied for Letter of Administration, but the same was dismissed by learned Additional District Judge, Tis Hazari Courts, Delhi. He also deposed that the other



attesting witness, namely, Major A.N. Punj has expired as per his knowledge.

34. The testimony of PW2 has not been controverted by way of cross examination by any of the respondents. An opportunity was given to respondent Nos. 5 and 6 through their legal heirs to cross-examine the witness but they have failed to do and the right of cross-examination was closed.

35. The petitioner has also examined **PW-1-S.K. Sharma, LDC** from the Office of Sub-Registrar-III, Asaf Ali Road, New Delhi who has deposed about the Will having been registered at the Office of Sub-Registrar on 20th May, 1993, the witness was cross-examined on behalf of the respondent No. 6 and legal heirs of respondent No. 5 in his cross-examination, the witness explained that he was an official witness and had no personal knowledge about the documents.

36. The Will dated 20th May, 1993 Ex.PW2/1 of Smt. Basant Kaur mentions that she was survived by her four sons, and one grandson, namely, Mr. Aftab Chadha, who is the son of Late Major Tilak Raj Chadha, who was settled in U.S.A. She in her Will, had enumerated the manner in which her properties were to be distributed on her demise. She had also appointed Shri D.P.Sachdeva, Advocate, who is the petitioner herein, as her sole Executor.

37. Learned counsel on behalf of the respondent No. 5 has argued that the Will was prepared in English, while Smt. Basant Kaur was not familiar with English language and also Smt. Basant Kaur had put her thumb impression on the Will even though she used to sign as is evident from bank account, which creates a doubt about the genuineness of the Will. However, PW2 has categorically deposed that the Will was prepared on the instructions of



Smt. Basant Kaur and the contents of the same had been explained in Vernacular language to her. There is no cross-examination on this aspect.

38. It would not be out of place to mention that Respondent No.5 did not file any Written statement or objections to the petition. On the demise of respondent No.5, the legal heirs were impleaded who adopted the objections/ reply filed by respondent No.6. It is a settled proposition of Law that the legal heirs on substitution, step into the shoes of the deceased and continue with the defence set up by the deceased. In the present case, the respondent no.5 during his lifetime had taken no objection to the genuineness of the Will.

39. The Will may be bearing the thumb impression of Smt. Basant Kaur instead of her signatures, but the onus was on the respondent No. 5 that Smt. Basant Kaur used to sign or that the thumb impression on the Will is forged and fabricated. No evidence whatsoever has been led by respondent No. 5 in this regard.

40. This aspect needs to be considered in the light of the fact that the Will was duly registered in the Office of Sub-Registrar. The genuineness of a Will cannot be held to be dispelled merely on the claim of the respondent No. 5 that it was not signed but had the thumb impression of the testator, in the absence of any cogent evidence in this respect.

41. The judgment of Pratap Singh & Anr. (supra) relied upon by the respondent No. 5 is not applicable to the facts in hand as there is uncontroverted testimony of PW2/petitioner, the Executor about the genuineness of the Will and also that Smt. Basant Kaur was in sound, disposing mind at the time of execution of the Will.

42. There is no challenge to the evidence of the petitioner or the attesting



witness. The unchallenged testimony of the petitioner proves the authenticity and genuineness of the Will Ex. PW-2/1 dated 25th May, 1993 of Late Smt. Basant Kaur.

43. The petitioner has successfully proven the Will of Late Smt. Basant Kaur.

44. **Issue No.1 is decided in favour of the petitioner.**

Relief:

45. The petitioner is held entitled to Letter of Administration in respect of Will dated 25th May, 1993 i.e., Ex.PW2/1. The present petition is allowed. The Probate/Letter of Administration with Will annexed is hereby granted to the petitioner, subject to payment of requisite court fees. The petitioner shall furnish administrative bond with one surety to the satisfaction of learned Registrar General of this Court.

46. The valuation filed by the SDM/Deputy Commissioner concerned, is on record.

47. On payment of the requisite court fee and other formalities noted above, the Probate/Letter of Administration shall be issued by the Registry.

48. The petition is disposed of in the above terms.

49. List before the Registrar General on 10th October, 2022 for depositing of the bond.

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 26, 2022

S.Sharma