



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

TEST.CAS. 4/2017

Reserved on : 05.07.2023

Date of Decision : 17.07.2023

IN THE MATTER OF:

MRS SHARDA RELAN

..... Appellant

Through: Mr. Sanjeev Sindhvani, Sr. Advocate
with Ms. Vidhi Goel, Ms. Malini Sud and
Mr. Krishna Dev Yadav, Advocates

Versus

STATE & ORS

..... Respondents

Through: Mr. Rajshekhar Rao, Sr. Advocate with
Mr. Anuj Shah and Ms. Yamini Mukherjee,
Advocates for respondent No.2.

Mr. Varun Ahuja, Advocate for respondent No. 3

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J.

1. By way of the present petition filed under Section 276 of the Indian Succession Act, the petitioner seeks grant of probate of registered Will dated 22.03.2012 (hereinafter, referred to as the 'Will') executed by her deceased husband viz. late *Sh. Narinder Dev Relan*.



2. Out of the petitioner's wedlock with late *Sh.Narinder Dev Relan*, two sons i.e., Respondents No.2 and 3 were born. While respondent No.3 filed his affidavit of no-objection to the petition, respondent No.2 filed objections. In pursuance of the directions for citation to be published in the newspaper, no member of public filed any objections.

3. Petitioner states that the deceased was a citizen of India and permanently residing at 25, *Sardar Patel Marg, New Delhi* at the time of his death. He was Hindu by faith and left behind petitioner and respondent Nos.2 and 3 as his only legal heirs.

4. It has been further averred that the deceased in his lifetime had executed the Will with respect to all his assets. Along with the petition, a list of immovable and movable assets of deceased testator has been placed on the record. The Will was registered in the office of Sub Registrar VII on 22.03.2012 vide Registration No.51 in Book No.3 Vol. No.535 at pages 162-164.

5. This court on 29.05.2018, after considering the pleadings of parties passed the following order:-

"1. The petitioner has filed this petition seeking probate of the document dated 22nd March, 2012 as the validly executed last Will of her husband Sh. N.D. Relan. The two sons of the deceased N.D. Relan have been impleaded as respondents no.2 and 3. On enquiry, it is stated that there are no other natural heirs.

2. The senior counsel for the petitioner states that the respondent no.3 Ajay Relan has already filed a reply by way of no objection and only the respondent no.2 Rohit Relan has filed objections. It is further stated that objections of



respondent no.2 Rohit Relan are also not such which require the pleas raised therein to be decided in this testamentary case, though the respondent no.2 has denied the Will.

3. A unilateral application for adjournment has been filed on behalf of counsel for the respondent no.2 Rohit Relan and Mr. Anuj Shah, Advocate appearing for the respondent no.2 Rohit Relan seeks adjournment on the ground of non-availability of the counsel for the respondent no.2 Rohit Relan.

4. Considering that the proceedings are at the stage of framing of issues, the non-availability of the counsel is no ground for adjournment and the counsel should have through Mr. Anuj Shah, Advocate, sent the proposed issues and which has not been done.

5. Mr. Anuj Shah, Advocate, on being given opportunity, has not made any submissions for framing of issues.

6. I have perused the objections filed by respondent no.2 Rohit Relan and find the respondent no.2 to have inter alia pleaded i) that when the deceased N.D. Relan was alive, there was an understanding arrived at in the Relan Family that after the demise of the parents, all their properties including the shareholding in various Relan Family Group Companies would devolve equally on respondents no.2 and 3; ii) that the Will of late N.D. Relan also clearly contemplates that after the demise of the petitioner and the deceased N.D. Relan, all the properties of the parents would devolve equally on the respondents no.2 and 3; iii) that however respondent no.3 has persuaded the petitioner to act contrary to the terms of the Will; iv) that as per the understanding of the respondent no.2, the petitioner also, at the same time as the subject Will of deceased N.D. Relan, had executed a Will on the same lines and the two Wills have to be given effect to as mutual Wills; v) that upon the demise of deceased N.D. Relan, the petitioner cannot in any way transfer, dispose of, alienate, or gift any of her properties that have devolved on the petitioner upon the demise of deceased N.D. Relan; and, vi) that this Court ought



to direct the petitioner and the respondent no.3 to deal with all the assets in accordance with the aforesaid undertaking.

7. A reading of the aforesaid objections rather shows the respondent no.2 Rohit Relan also to have admitted the document of which probate as Will is sought and having not disputed the same.

*8. As far as the other pleas raised in the objections are concerned, they are not to be adjudicated in testamentary jurisdiction and law in this regard is very well settled. The Court exercising testamentary jurisdiction neither interprets the Will nor decides the title of the deceased to the properties bequeathed. Reference, if any required, can be made to **Krishna Kumar Birla Vs. Rajendra Singh Lodha** (2008) 4 SCC 300 and **Ishwardeo Narain Singh Vs. Srimati Kamta Devi** AIR 1954 SC 280 and to the dicta of this Court in **Mukti Dutta Vs. Vijay Bhushan** 2018 SCC OnLine Del. 6924 and **Sarla Gupta Vs. State** 2017 SCC OnLine Del. 12689.*

9. Thus there is no need to frame issues on the aforesaid objections since adjudication thereof is beyond the jurisdiction in this testamentary proceeding.

10. The senior counsel for the plaintiff however informs that the respondent no.2 has in admission / denial, denied the document of which probate is sought.

11. Even otherwise, the order in the probate case being an order in rem, it is deemed appropriate that the petitioner proves the document claimed to be the Will.

12. Accordingly, the following issues are framed:

(i) Whether the document dated 22nd March, 2012 is the validly executed last Will of deceased N.D. Relan? OPP

(ii) Relief.

13. No other issue arises or is pressed.



14. The petitioner to file affidavits by way of examination-in-chief of all her witnesses within six weeks. If more than one witness to the document claimed to be the Will is to be examined, affidavits of all witnesses be filed together and the witnesses be produced on the same date for cross-examination if any, by the respondents.”

6. Petitioner states that the Will was duly executed and attested by two attesting witnesses namely, *Pradeep Kumar Rastogi* and *A.K. Goyal*. To prove that the document dated 22.03.2012 was the validly executed last Will of the deceased *N.D. Relan*, the petitioner examined one of the attesting witnesses-*Pradeep Kumar Rastogi* as PW-1. *Mr. Rastogi* tendered his affidavit in evidence as PW-1/A and identified the signatures of the testator on the Will at points A1 to A8. He further deposed that the said signatures were put by the testator in his presence. He also identified the photographs of the testator affixed at page 1 of the Will. He further identified his own signatures as well as of the other attesting witness *A.K. Goyal* and stated that *A.K. Goyal* had signed in his presence. He deposed that the testator had put his thumb impression and finger prints on the Will in his presence whereafter, he and *A.K. Goyal* also put their respective thumb impressions at point E and F.

In cross-examination, he reiterated the sequence of events, which included him first going to the house of the testator on 22.03.2012, and from where he alongwith the testator and *A.K. Goyal* went together to the office of the Sub-Registrar for registration of the Will. Interestingly, to a question put on behalf of the respondents, the witness answered as under:-

“...It is correct that both the Wills of Mr. N.D. Relan and Mrs. Sharda Relan were executed and registered on 22.03.2012 one



after the other and both the said Wills were witnessed by me as well as by Mr. A.K. Goyal.”

7. The respondents had also examined one *Mr. Kishan, U.D.C.*, from the office of the Sub-Registrar. It was suggested to him that *Smt. Sharda Relan* also executed a Will dated 22.03.2012 immediately after the registration of the Will of *Mr. N.D. Relan*. The question was rightly disallowed as the Will of *Smt. Sharda Relan* was not in issue in the proceedings.

8. A perusal of the cross-examination of PW-1 would show that no question or suggestion was put to the witness challenging the genuineness or execution of the Will. Mr. Sindhvani, learned Senior Counsel rightly contended that during cross-examination of the attesting witness, the respondent No.2 had himself given a suggestion of the due execution of the Will. In other words, the testimony of PW-1 has remained unrebutted and unchallenged on the aspect of valid execution and registration. Even otherwise, this aspect was also noted in the order dated 29.05.2018 passed by this Court and extracted hereinabove.

9. In this backdrop, with no allegation of testator being not of sound mind or any other suspicious circumstance in execution or registration of the Will, this Court only requires to see whether the Will has been proved to be validly executed.

10. Section 68 of the Evidence Act provides that if a document is required by law to be attested, it shall not be used as evidence until at least one attesting witness has been called for the purpose of proving its execution, if there be an attesting witness alive, capable of giving evidence and subject to the process of the court. In other words, a Will is a document that is required



to be attested by two witnesses, and can be proved by examining only one of them.

11. It is noted that, the only contention raised by the defendant No. 2 has been that no explanation has been rendered by the petitioner as to why the second attesting witness was not examined. Indeed, no such explanation is discernible from the material placed on record but in view of the stipulation in law, and in terms of the Section 68 of the Evidence Act, the due execution of a Will stands proved by examining any one of the attesting witnesses. The Supreme Court, recently, in the case of Murthy v. C. Saradambal reported as (2022) 3 SCC 209, enunciated the law relating to Wills in the following manner:

“31. One of the celebrated decisions of this Court on proof of a will, in H. Venkatachala Iyengar v. B.N. Thimmajamma [H. Venkatachala Iyengar v. B.N. Thimmajamma, MANU/SC/0115/1958 : AIR 1959 SC 443] is in H. Venkatachala Iyengar v. B.N. Thimmajamma, wherein this Court has clearly distinguished the nature of proof required for a testament as opposed to any other document. The relevant portion of the said judgment reads as under: (AIR p. 451, para 18)

"18.... The party propounding a will or otherwise making a claim under a will is no doubt seeking to prove a document and, in deciding how it is to be proved, we must inevitably refer to the statutory provisions which govern the proof of documents. Sections 67 and 68 of the Evidence Act are relevant for this purpose. Under Section 67, if a document is alleged to be signed by any person, the signature of the said person must be proved to be in his handwriting, and for proving such a handwriting under Sections 45 and 47 of the Act the opinions of experts and of



persons acquainted with the handwriting of the person concerned are made relevant. Section 68 deals with the proof of the execution of the document required by law to be attested; and it provides that such a document shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution. These provisions prescribe the requirements and the nature of proof which must be satisfied by the party who relies on a document in a court of law. Similarly, Sections 59 and 63 of the Succession Act are also relevant. Section 59 provides that every person of sound mind, not being a minor, may dispose of his property by will and the three illustrations to this section indicate what is meant by the expression "a person of sound mind" in the context. Section 63 requires that the testator shall sign or affix his mark to the will or it shall be signed by some other person in his presence and by his direction and that the signature or mark shall be so made that it shall appear that it was intended thereby to give effect to the writing as a will. This section also requires that the will shall be attested by two or more witnesses as prescribed. Thus, the question as to whether the will set up by the propounder is proved to be the last will of the testator has to be decided in the light of these provisions. Has the testator signed the will? Did he understand the nature and effect of the dispositions in the will? Did he put his signature to the will knowing what it contained? Stated broadly it is the decision of these questions which determines the nature of the finding on the question of the proof of wills. It would prima facie be true to say that the will has to be proved like any other document except as to the special requirements of attestation prescribed by Section 63 of the Indian Succession Act. As in the case of proof of other documents so in the case of proof of wills it would be idle to expect proof with mathematical certainty. The test to be applied would be the usual test



of the satisfaction of the prudent mind in such matters."

12. Mr. Sindhwani, learned Senior Counsel for the petitioner rightly contented that the respondents having neither doubted the genuineness or validity of the Will and having also not stepped in the witness box, cannot be allowed to agitate at the stage of arguments. The principle of *res judicata* not only applies in respect of separate proceedings but the general principles also apply at the subsequent stage of the same proceedings. Further, the same court is precluded to go into that question again which has been decided or deemed to have been decided by it at an early stage. {Refer Barkat Ali & Anr. v. Badri Narain reported as **(2008) 4 SCC 615**}.

13. In light of the foregoing discussion and analysis, this Court is satisfied as to the genuineness of the Will dated 22.03.2012. The conditions for the grant of probate being met, this Court finds no impediment in concluding that the Petitioner has been able to prove the Will of the deceased as his last and final testament and thus successfully discharged her onus.

14. Resultantly, the petition is allowed and the probate with respect to the Will dated 22.03.2012 is granted, subject to payment of requisite stamp duty/court fees.

15. The valuation of the property has been carried out by Assistant Collector and the same is already on record.

16. The Petitioner shall furnish Administrative Bond with one surety to the satisfaction of the Registrar General of this Court.



17. The Registry shall issue the Probate with respect to the Will dated 22.03.2012 on payment of the requisite court fee and completion of other formalities.

(MANOJ KUMAR OHRI)
JUDGE

JULY 17, 2023
na

