

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

+ FAO 276/2010

Reserved on: 20.10.2010

Decided on: 01.11.2010

RAJ KUMAR & ANR ..... Appellant  
Through Mr. Rajeshwar Tyagi, Adv.

versus

STATE & ORS. ... Respondents  
Through Nemo

**CORAM:  
HON'BLE MR. JUSTICE MOOL CHAND GARG**

1. Whether the Reporters of local papers may be allowed to see the judgment? No.
2. To be referred to Reporter or not? No.
3. Whether the judgment should be reported in the Digest? No.

**MOOL CHAND GARG, J**

1. This appeal arises out of the order passed by the Addl. District Judge whereby the Addl. District Judge has allowed a petition filed by the respondent under Section 276 of the Indian Succession Act seeking probate of the Will dated 22.08.1994 by the respondent and has granted letters of administration in respect thereof in respect of the respondent. The Will in question has been executed by one late Smt. Neerta (hereinafter referred to as the deceased).

2. According to the respondent the deceased wife of late Shri Kanchi Lal had a permanent residence at House No.52, Sawan park Extension, Ashok Vihar, New Delhi. She died on 01.06.1998 in Delhi. She left behind her last and final Will dated 22.08.1994 executed in presence of Smt. Om Wati and Shri D.P. Singh, Advocate whereby the respondent was made the sole beneficiary/ legatee of the said Will. The Will was duly registered in the office of the Sub Registrar Delhi on 22.08.1994. The appellants who were also the legal heirs of deceased Neerta Devi raised objections to the execution of the aforesaid Will and in fact went to the extent of saying that the Will in question was forged and fabricated. It was also their case that the

deceased could not have executed the Will in question in favour of the respondent because the respondent had involved her in various litigations. It was also stated that the deceased executed her final Will dated 22.08.1994 in favour of the appellants/objectors who are her real son.

3. The Addl. District Judge framed the following issues:

“i. Whether the deceased Smt. Neerta Devi had validly executed the Will dated 22.08.1994 while in sound disposing mind and that the said Will is the last Will and testament of the deceased? OPP

ii. Relief”

4. Parties led evidence. As far as the respondent is concerned he examined himself and also examined Shri Munesh Kumar as PW1 and D.P.Singh Advocate as PW3. D.P.Singh is one of the attesting witness. I find the appellant examined Smt. Sheela Devi as RW3 and one Raj Kumar as RW4.

5. The Trial Court taking into consideration the statement made by respondent Bhudev Prasad and that of Shri D.P. Singh the attesting witness who is also the maker of the Will decided issue No.1 in favour of the respondent and consequently allowed the petition filed by the respondent granting probate of the Will Exhibit P1 which is dated 22.08.1994.

6. With respect to the Will propounded by the appellants dated 22.08.1994 it has been observed by the Addl. District Judge that the said Will was not approved by the appellants. Some of the observations made by the Addl. District judge & the various objections were raised by the appellant which were as follows:

(i) The respondent wrongly claimed himself as the son of Shri Kanchi Lal while he was son of Shri Panna Lal

(ii) Deceased never executed any such Will as the latter was looked after and being cared by the objectors who are his real sons.

(iii) No reasons have been explained by the testatrix as to why she would like to exclude other legal heirs from succeeding the property. Moreover it was the respondent

who had approached PW3 for the purpose of preparing the Will which raises suspicion on the genuineness of the Will in question.

- (iv) There was no denial the appellants were legal heirs of the deceased Neerta Devi even if appellant was son of Panna Lal the previous husband of testatrix. In fact there was a quarrel that the respondent was son of late Smt. Neerta Devi.

7. The Addl. District judge has taken note of these objections. Some observations made by the Addl. District Judge are reproduced hereunder:

“The reason as why the testatrix opted to bequeath her property in favour of petitioner is explained by Sh. D.P.Singh (PW3) stating that it was disclosed by her that all of them (other children) were having their own property.

So far as the preparation of will on the instruction of petitioner is concerned, in his cross-examination PW3 disclosed as-

“It is correct that Bhudev has approached me for preparation of this Will and I prepared the same as per instructions of Bhudev Prasad”.

A perusal of entire statement given by PW3 speaks otherwise. For example, it was also disclosed by same witness that “at that time she was accompanied by Omwati---I do not know whether Bhudev also came to me or not -----2-3 days prior to the execution of the Will also, she (testatrix) came to me for discussing the will.

From all this and other depositions of PW3, it appears that the witness was not intending to admit the fact that Bhudev had approached him or the will was prepared as per his (petitioner's) instruction. Perhaps, sentence referred by Ld. counsel for respondent has been incorrectly recorded.

From the statement of PW1 i.e. LDC from the office of Sub registrar, it is well established that will in question was registered in the office of Sub registrar and from the statements of other witnesses particularly attesting witness i.e. PW3 it is proved that will in question was validly executed by testatrix in her sound disposing mind. On the other hand, it is not proved that any other will was also executed by same testatrix.

This issue is, therefore, decided in favour of petitioner.”

8. Before this Court the learned counsel for the appellant again reiterated the objections taken before the Addl. District judge to contend that the Will in question was a forged Will. Nothing has been

brought to the notice of this Court as to what has happened to the second Will which has been propounded by the appellants as the last & final Will of late Smt. Neerta Devi. There is nothing on record to show that any probate has been granted with respect to the said Will. It is also not clear as to whether the appellants filed any Civil Suit for the purpose of seeking probate of the second Will despite having the knowledge that the appellants were propounding the Will dated 22.08.1994 as the last & final Will of deceased Neerta Devi which was duly registered.

9. According to the appellant Shri Bhudev Prasad the respondent was not the real son of Shri Kanchi Lal which fact is not under dispute but according to the respondent he was son of late Shri Panna Lal.

10. It is an admitted fact that he is son of late Shri Panna Lal but according to him he was adopted by Shri Kanchi Lal when he contracted second marriage with his mother long back and since then the said Shri Kanchi Lal had been treating the respondent as his son till he died in the year 1967.

11. The second objection taken by the appellant is that Will in question relied upon by the respondent was prepared by Shri D.P.Singh on the asking of the respondent and this casts serious aspersions about the genuineness of the Will. This aspect has been discussed by the Addl. District Judge taking note of the statement made by Shri D.P.Singh as has been observed at page 4 of the judgment in question and which has been noticed by me above.

12. The third objection taken by the appellant was that there was litigation going on between the respondent and late Smt. Neerta Devi and therefore there was no reason for her to execute the Will in favour of the respondent. In this regard some certified copies of the suit plaint which it is stated had been filed by the respondent against Smt. Neerta Devi and the one filed by Smt. Neerta Devi against the appellant have been brought on record before this Court along with written statements by the parties. There is nothing to show that these documents were put in the cross-examination of the respondent when the probate petition was going on. No application under Order 41 Rule 27 CPC has been filed by the appellant before this Court.

13. In any event, if one go through the suit plaint and the written statement filed by the respondent to highlight their objections one would only find that primarily the dispute in those litigation was in fact between the respondent and the present appellants inasmuch as Suit No.353/94 goes to show that it is a plaint filed by the appellant against Shri Daya Kishan, Shri Raj Kukmar, the present appellant and Smt. Sheela Devi daughter of Shri Kanchi Lal. Smt. Neerta Devi is only a formal party. Moreover the dispute had arisen after Kanchi Lal expired who was admittedly the father of Shri Bhudev Prasad the respondent.

14. Another plaint available on record which have been stated to have been filed by Smt. Neerta Devi in fact have been filed by the appellant namely Daya Kishan and Raj Kumar against Bhudev Prasad for recovery of the property bearing No. 52, Sawan park Extension, Ashok Vihar, New Delhi which is the property subject matter of the Will. It appears that Neerta Devi had only been made a proforma party to the said suit as she is being represented through special attorney Raj Kumar i.e. third plaintiff in that case who is also an appellant in this case.

15. In any event the appellants having not brought on record the second Will which they state was the last & final Will of deceased Nerta Devi and failed to prove the said Will they cannot now question the probate of registered Will left by late Smt. Neerta Devi. It many a times happens for various reasons that Will are executed in favour of persons who are not the legal heirs of the deceased. As such it cannot be a good reason to discard the Will of the deceased executed in favour of the respondent only because the appellants who are the sons of the deceased have not been made the beneficiary.

16. Taking into consideration the averments made in Suit No.65/95 certified copy of which has been filed by the appellants which is a suit for recovery of possession of the property subject matter of the Will it is apparent that appellants are unable to establish their claim so far before the concerned Court and are fighting an indirect battle by way of this appeal, more so because they have not been able to obtain probate with respect to the so-called later Will nor has placed the

same before this Court or before the Addl. District judge. It appears that they have also not confronted the respondent with the 2<sup>nd</sup> Will nor have led any cogent evidence to support that any such Will was executed by late Smt. Neerta Devi or that the second Will was the last Will left by her.

17. Taking all the facts of this case into consideration I find no merit in the grounds of appeal taken by the appellant before this Court so as to assail the judgment of the Addl. District Judge. Accordingly I find no reason to interfere with the judgment of Addl. District judge. The appeal is dismissed at this stage itself with no orders as to costs.

CM No.13318/2010 (stay)

Dismissed as infructuous.

**MOOL CHAND GARG, J**

**NOVEMBER 01, 2010**  
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