* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ **FAO No.34/1994**

% **6th September, 2011**

SHRI RAJ KUMAR SINGH & ANR. ...... Appellants

Through: Mr. G. Tushar Rao and Mr. Atanu Mukherjee, Advocates.

VERSUS

MRS. JAGJIT CHAWLA & OTHERS ...... Respondents

Through: None.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this first appeal under Section 299 of the Indian Succession Act, 1925, is to the impugned order of the probate court dated 25.11.1993, which has granted probate of the Will of the deceased Sh. Sohan Singh dated 3.1.1976.

2. Before proceeding further, I must state that the present case is not one of the cases where there is a classical dispute with respect a Will interse heirs of the deceased. In the city of New Delhi, before the provision of Section 53-A of the Transfer of Property Act 1882, dealing with the doctrine of part performance and incorporation of Article 23-A in

the Stamp Act as applicable to Delhi requiring Stamp duty of 90% of the value of an Agreement to Sell were amended by Act 48 of 2001, transfer of title of an immovable property in Delhi was taking place by documents being the Agreement to Sell (taking benefit of doctrine of part performance under Section 53-A of the Transfer of Property Act 1882), General Power of Attorney (on the basis of Section 202 of the Contract Act 1872, where a power of attorney given for consideration could not be cancelled), Will (to operate after the death of the seller as the power of attorney after death is not effective). The amendment which was brought about to Section 53-A of the Transfer of Property Act, 1882 along with the related provisions is The Registration and other Related Law (Amendment) Act, 2001 [Act No. 48 of 2001].

3. I am stating these preliminary facts because in ordinary cases with respect to dispute with regard to execution of Will, there arise issues with respect to either suspicious circumstances surrounding the Will or why the some of the natural heirs are disinherited or the propounder taking active participation in making of the Will and so on, but these aspects would pale into insignificance in the facts of the present case where basically the Will has been executed in furtherance of the action for transferring of the property being plot No.75 admeasuring 200 sq. yards in Block-C Jhilmil Tahirpur Residential Scheme G.T Road, Railway Lines near I.T.I.Shahdara, Delhi. (in short 'the subject property'). In fact, the subject Will Ex.P-1

dated 3.1.1976 was preceded by a registered General Power of Attorney (GPA) Ex.PW3/1 dated 3.12.1973 with respect to the subject property.

4. The facts of the case are that the respondent no.1, petitioner in the probate petition filed a petition under Section 276 of the of the Indian Succession Act, 1925 for grant of a probate in respect of the Will dated 3.1.1976 of the deceased Sh. Sohan Singh, who is stated to have died on 12.3.1976. The deceased was survived by his widow, one son and two daughters and which persons objected to the claim of probate. The respondent no.1 had pleaded that the deceased Sh. Sohan Singh had from time to time taken different amounts of loans, including on the occasion of the marriage of his daughter, and when the loan figure reached an amount of Rs.12,000/-, the deceased Sh. Sohan Singh agreed to transfer the subject property for adjusting the loan amount, and for which purpose, he executed a registered General Power of Attorney dated 3.12.1973 in favour of the probate petitioner. This General Power of Attorney was an exhaustive General Power of Attorney not only to take every action with respect to the property, but the said General Power of Attorney included the power to even sell the property. The deceased Sh. Sohan Singh, thereafter is stated to have executed the Will dated 3.1.1976 i.e. after roughly about 2 years of execution of the General Power of Attorney dated 3.12.1973. Therefore, the basic case of the probate petitioner was that the property has been disposed of as per the Will for consideration.

5. The appellants contested the probate petition and alleged that the Will was unnatural because there was no reason stated in the Will to disinherit the natural heirs. It was further alleged that the deceased Sh. Sohan Singh at no point of time, during his life time ever mentioned about the execution of the Will. It was further alleged that the Will was a forged and fabricated document and that the deceased Sh. Sohan Singh was in a sound financial condition and hence there was no need to sell the property and in fact no loans were taken.

6. The main issue therefore which was argued before the probate Court, and which is also an issue argued before me, is that whether the deceased Sh. Sohan Singh left behind a valid Will dated 3.1.1976.

7. Respondent No.1 before the trial Court led evidence of as many as seven witnesses including of a handwriting expert. The objectors examined four witnesses including their handwriting experts. The witnesses PW2 and PW3 were the attesting witnesses to the Will. PW-4 deposed with respect to the loan being advanced of the total amount of Rs.12,000/- to Sh. Sohan Singh by Sh. Sewa Singh (father-in-law of probate petitioner) and which when demanded from Sh. Sohan Singh, he had agreed to transfer the subject plot by execution of the Power of Attorney Ex.PW3/1. He also deposed with regard to execution of the Will deed Ex.P-1 in favour of the daughter-in-law/the probate petitioner/respondent and also the fact that original title documents of the property were handed over to the probate petitioner. PW-5 Sh. Rajender

Kumar deposed that he knew Sh. Sohan Singh since the year 1967 and that Sh. Sohan Singh used to take loans. He also deposed with respect to the good health and sound disposing mind of the deceased Sh. Sohan Singh. The probate petitioner deposed as PW-6 and she deposed that the Will Ex.P-1 was executed because the deceased Sh. Sohan Singh had taken loans from her father in law Sh. Sewa Singh, and for which purpose, the power of attorney Ex.PW3/1 and the Will Ex.P-1 was executed. PW-7 was the handwriting expert Sh. M.K. Mehta who gave his opinion with respect to the signatures of the deceased Sh. Sohan Singh on the Will Ex.P1 by comparing the same with various admitted signatures.

8. RW-1 Sh. Rajkumar was the son of Sh. Sohan Singh and he deposed with respect to his father not living in Delhi and that his father owned agricultural land. He also deposed that neither the Will nor the general power of attorney contained the signatures of his father Sh. Sohan Singh. RW-2 Sh.Laik Ram was the father-in-law of the daughter of the deceased who deposed that the deceased never told him about monetary dealing with any person including Sh. Sewa Singh father-in-law of the probate petitioner. RW-3 Sh. Rameshwar Dayal deposed that Sh. Sohan Singh had about 40-45 bighas of land with a garden and tubewell in the village. RW-4 Sh. D.P.Bhatia was the handwriting expert on behalf of the appellants/objectors.

9. The Court below has duly examined the statement of each of the witnesses alongwith their cross-examinations and the arguments of the

respective counsel on the basis of such statements. While dealing with the deposition of RW-1 Sh. Raj Kumar, the son of the deceased Sh. Sohan Singh, the trial Court has observed the following in para 26 of the judgment:-

> "RW-1 Rajkumar son of the testator has stated that his father never told him that he had executed any will in favour of the petitioner. He has also stated that the will Ex.P-1 is not signed by his father. In cross-examination, he has admitted that letters written by his father were available with him but he has not produced them nor brought them with him which could be used for comparison and has with-held the same. In any case, he is an interested witness and he is directly affected as the will is against his interest. In that case, it would not be in his interest to admit the signatures of his father on the will Ex.P-1. He has even denied signatures of his father on the power-of-attorney Ex.PW-3/1 which RW-2 has not specifically denied and which has also been proved by PW-4, whose testimony on this aspect was not challenged. This power-of-attorney is duly registered with the Sub-Registrar and it carries presumption of due execution by its executants Shri Sohan Singh. Denial by RW-1 of this power of attorney Ex.PW-3/1 is thus not bona fide which also makes his testimony regarding the will Ex.P-1 not reliable. He has however admitted that perpetual lease-deed Ex.PX is signed by his father but he did not know and could not tell how the petitioner came to be in possession of this lease deed. This lease-deed was produced in court by the petitioner on application made by the objector and it cannot be said that he would not be aware how this Ex.PX (lease deed) came in the possession of the petitioner. In any case, there is no explanation from the side of the objector as to how this document was not in their possession and how it was with the petitioner. In the circumstances, it has to be inferred that he was aware that his father must have given this document to the petitioner in pursuance of some obligation incurred by him and this also

suggests that he was also aware about the will."(Emphasis added)

10. On the reports of the handwriting experts, the Court below has referred to the fact that evidence of handwriting expert can never be conclusive and the same must be received with great caution, however no hard and fast rule can be laid down and each case has to be decided as per its own merits. While dealing with the respective reports of the handwriting experts of both the parties, the Court below has referred to the fact that the report prepared by the handwriting expert of the appellants only relies upon the letter dated 15.10.1972 alleged to have been written by the deceased Sh. Sohan Singh and authorship of which letter was not proved on record, and more importantly, the disputed signatures having not been compared with the admitted signatures appearing on the perpetual lease deed Ex. PX which was signed at several places by the deceased Sh. Sohan Singh. Accordingly, the Court below preferred the report of handwriting expert of the respondent No.1 in preference to the report of the handwriting expert of the appellants by observing as under:-

> "32. So, the question to be decided is, whether the evidence of the expert examined on behalf of the objectors is sufficient to discredit/disbelieve the direct testimony of PW-2 and PW-3. Their expert Sh. D.P.Bhatia has appeared as RW-4. He has given his expert opinion about the disputed signatures on the will Ex.P-1 and the power-of-attorney Ex.PW3/1 on the basis of a letter dated 15-10-1972, alleged to have been written by Sohan Singh. The authorities of that letter has not been proved on record. Even RW-1 son of the testator has not proved it. The disputed signatures on the will have not been compared

> with the signatures appearing on the perpetual lease-deed Ex.PX, which has found above, is signed by the testator at several places. By not doing so, this witness has avoided to consider valid material, for no reasons. His evidence, in the circumstances, cannot be said to be unbiased. Accordingly to this expert evidence, the power-of-attorney Ex.PW-3/1 is also not signed by the person who has signed the letter dated 15-10-1972, which as held above, had been executed by the testator.
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> 33. On the other hand, Shri M.K.Mehta (PW-7) Handwriting expert examined on behalf of the petitioner, has opined that the will Ex.P-1, power-of-attorney Ex.PW-3/1 and the perpetual lease deed Ex.PX are signed by the same person. He had been cross-examined at great length, and during arguments expert-evidence was not touched on behalf of the objectors. He has given very sound reasons in his report, and during his oral examination in support of his opinion, and I do not find any infirmity or reason to discard his opinion, or is prefer the opinion of RW-4 Mr. Bhatia Objector's expert."(underlining added).

11. The trial Court has also observed that the testimonies of the attesting witnesses PW-2 and PW-3 are of independent, dis-interested, satisfactory and trustworthy witnesses on the point of due execution and attestation of the Will and therefore there was no reason to disbelieve them. It was therefore held that the Will Ex.P1 was proved to have been signed by deceased Sh. Sohan Singh in the presence of the attesting witnesses who signed in the presence of the testator.

12. A resume of the above-said facts, findings and conclusions of the trial Court as also other findings/discussions otherwise given in the impugned judgment and decree, show that the following conclusions can safely be arrived at:-

(i) The deceased Sh. Sohan Singh executed the registered General Power of Attorney Ex.PW3/1 in favour of Sh. Sewa Singh and which was an exhaustive General Power of Attorney giving all powers including to sell the property. This Power of Attorney being registered, there is no reason to disbelieve the same and the contents of the same show that exhaustive powers including to sell the property were given and which could not be so if the title in the property was not meant to be transferred. Further, this Power of Attorney admittedly was never revoked during the life time of Sh. Sohan Singh.

(ii) The very fact that the Will Ex.P1 is executed after about two years of the execution of the power of attorney Ex.PW3/1 is proof of the fact that Sh. Sohan Singh remained honest and true in his life time and after execution of the General Power of Attorney he also executed a Will much later inasmuch as the power of attorney will not operate after his death.

(iii) If there was not to be any transfer of title of the subject property under the Power of Attorney and the Will, there was no reason why the original documents of the title of the property would have been delivered to the probate petitioner and her father-in-law Sh. Sewa Singh. Admittedly these documents were in the possession and custody of the probate petitioner and were produced in Court by them. The possession of original title documents with the probate petitioner is therefore a very strong aspect to indicate the transfer of title by Sh. Sohan Singh,

otherwise there is no reason why original documents of title of the property would at all have been given by Sh. Sohan Singh to the probate petitioner and her father-in-law Sh. Sewa Singh.

13. Learned counsel for the appellant very passionately urged three main arguments:-

(i) The first argument was that consideration being the grant of loan has not been proved on behalf of the probate petitioner and which therefore takes away the very foundation of General Power of Attorney and the Will of Sh. Sohan Singh.

(ii) The execution of the Will is shrouded in very suspicious circumstances and therefore the same merited rejection, more so as the natural heirs were disinherited.

(iii) The very fact that there is a time span of about two years between execution of the Power of Attorney and the Will squarely casts a shadow on the existence and the validity of the Will of the deceased Sh. Sohan Singh.

In my opinion, the arguments as raised on behalf of the appellants have no merit and are bound to be rejected. Once the power of attorney is proved and exhibited on record and which Power of Attorney contained extensive terms to completely deal with the subject property including selling of the same and consequently received consideration, therefore, the same is a very strong proof that a Power of Attorney being

of this nature, and which power of attorney was never revoked by Sh. Sohan Singh during his life time, was executed for consideration. After all no person in his sound mind will execute a General Power of Attorney in favour of a complete stranger giving him complete entitlement to deal with the property including to sell the same. Thus, the argument that no consideration has been proved to have been paid to late Sh. Sohan Singh has no legs to stand upon. In fact, during the course of arguments, I put it to the counsel for the appellants as to whether on behalf of the appellants, documents were filed in the trial Court, including of the bank accounts of Sh. Sohan Singh to show his financial position that he always had sufficient monies and therefore there was no need for him to take loans, however, counsel for the appellants admitted that no document to show the liquidity or the financial capacity of the deceased Sh. Sohan Singh was filed. What was however relied upon was that the deceased Sh. Sohan Singh owned about 40-45 bighas of land in the village and therefore it should be held that he had financial capacity and therefore he would not have required any loans. In my opinion, owning of an agricultural land automatically will not show the financial capacity of a person inasmuch as financial capacity has more to do with the liquidity of the person, and which liquidity has to be established by means of bank accounts or similar proofs of financial capacity. Of course, I only need to add that agricultural activity is not ordinarily such a profitable activity and after all admittedly the deceased had a reasonable large family to maintain consisting of besides himself, his wife, one son and two

daughters. On balance of probabilities therefore I find that the deceased would have in fact taken loan and which aspect is deposed to by, besides Sh. Sewa Singh, also by an independent witnesses Sh. Rajender Kumar, PW-5.

(iv) The argument that there was a gap of two years between the execution of General Power of Attorney and the Will negates to the existence of the Will, is an argument which lacks substance inasmuch as if the respondent No.1 and Sh. Sewa Singh wanted to fabricate any Will, then, there was no reason why it would not have been done simultaneous to the execution of the General Power of Attorney on 3.12.1973. On the contrary this gap goes to show the authenticity and validity of the Will inasmuch as the deceased Sh. Sohan Singh remained honest and true during his life time because he realized that a Will also had to be executed inasmuch as the Power of Attorney would cease to be operative after his life time. In any case, when taken with other circumstances and on the balance of probabilities, this argument is not of such a nature so as to overturn the detailed findings and conclusions of the Court below which have held that power of attorney and the Will to have been validly executed by the deceased Sh. Sohan Singh.

(v) The issue with regard to the suspicious circumstances and the natural heirs being disinherited is really not an issue in the present type of cases where the case is not a normal case with respect to a Will inasmuch as the present case is a case of transfer of title in a property by virtue of

not only the Will but also an earlier executed General Power of Attorney on 3.12.1973. Merely because the deceased may not have told the objector during his life time of execution of the Will or the General Power of Attorney cannot mean that these documents were not executed, and in any case, the objectors ought not to be believed because they are bound to depose that the deceased never told them of the execution of this documents whereas in fact the deceased could have told them, however, since there is no proof of the same, the objectors have chosen to conveniently deny the same.

14. A civil case is decided on balance of probabilities. The balance of probabilities in the present case shows that the Power of Attorney Ex.PW3/1 and the Will Ex.P-1 were duly executed by the deceased Sh. Sohan Singh. The Power of Attorney is after all a registered Power of Attorney, and more importantly, the original title documents of the subject property are in the possession of the respondent no.1 and which would not have been, if there was not to be any transfer of title in the suit property. Merely because two views are possible, this court would not interfere with one possible and plausible view which is taken by the court below, unless such view causes grave injustice. In my opinion, in fact, grave injustice will be caused not to the objectors/appellants but to the respondent no.1 and her father-in-law Sh. Sewa Singh, if the impugned judgment is set aside.

15. In view of the above, there is no merit in the appeal, which is therefore dismissed leaving the parties to bear their own costs. Trial court record be sent back.

SEPTEMBER 06, 2011 **VALMIKI J. MEHTA, J.**
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