

**IN THE COURT OF SH SHIV KUMAR
DISTRICT JUDGE-02 (WEST),
TIS HAZARI COURTS, DELHI**

P.C. No. 21/20

Naresh Bedi

Petitioner

Versus

State & Ors.

Respondents

ORDER OF APPLICATION UNDER ORDER 6 RULE 17 CPC AND ORDER 7 RULE 14(3) READ WITH SECTION 151 CPC MOVED ON BEHALF OF PETITIONER FOR SEEKING PERMISSION TO AMEND THE PROBATE PETITION AND OTHER RELIEFS.

1. Vide this order I shall decide the application moved under order 6 rule 17 and order 7 rule 14(3) read with Section 151 CPC, on behalf of petitioner for seeking permission to amend the Probate petition and other reliefs.

2. It is averred in the application that the petitioner has filed the above mentioned Probate Petition against the respondent inter alia praying as under:

- a. “Grant the Probate in respect of the last Will dated 03.12.1995 of the deceased Late Shri Ramesh Bedi in favour of the Petitioner;
- b. After allowing the grant of Probate the Will in favour of the Petitioner, the Petitioner be exempted from furnishing any security/surety ; and
- c. Pass any other relief which this Hon’ble Court may deem fit and proper in the facts and circumstances of the present case in favour of the Petitioner”.

3. It is further averred in the application that the Will was duly registered with the Sub-Registrar -II Delhi vide the Registration No. 69310 in Additional Book No. 3, Volume No. 2765 on pages 168 to 171 on 27.12.1995. The petitioner has filed the above mentioned Probate Petition under Section 276 read with Section 237 of the Indian Succession Act, 1925, on the basis of certified copy of the registered Will dated 3.12.1995.

4. It is further averred in the application that it had been stated in the petition that the Original Will in question was lying with the petitioner in his Almirah alongwith other documents including the Will of the mother of the parties. Despite best efforts made by the petitioner the same was not traceable at the time of filing of the Probate Petition. It is further averred that, it appears that the said original documents including the Will in question has been removed by Mrs Vandana Bedi and Mr. Ajay Bedi, wife and son of the petitioner, for which the petitioner has already lodged a Non Cognizable report dated 13.03.2020.

5. It is further averred that on 25.08.2023, while cleaning the store room the petitioner found the two original Wills, one of his father Sh. Ramesh Bedi and another of his mother Smt. Sheela Devi lying in an envelop in an old file. The petitioner has annexed the original Will (registered) dated 03.12.1995 executed by late father Sh. Ramesh Bedi with the present application.

6. It is further averred that since the original Will dated 03.12.1995 executed by late father Sh. Ramesh Bedi has now been traced, the petitioner is preferring the present application for amendment of the petition by incorporating the following facts which are necessary for determining the real questions in controversy between the parties.

7. The petitioner is seeking the following amendments in the Probate petitioner.

The amended Cause title of the Probate Petition shall read as under:

“ AMENDED PETITION UNDER SECTION 276 OF THE INDIAN SUCCESSION ACT, 1925 FOR GRANT OF PROBATE OF THE WILL DATED 03.12.1995 OF LATE SHRI RAMESH BEDI”

Amended para 1 of the petition shall read as under :

1. That the present petition is being filed by the Petitioner under Section 276 of the Indian Succession Act, 1925 for grant of Probate of

the Will dated 03.12.1995 of late Shri Ramesh Bedi, which is duly registered with the Sub-Registrar-II, Delhi, vide the Registration No. 69310 in Additional Book No. 3, Volume No. 2765 on pages 168 to 171 on 27.12.1995. Original Will dated 03.12.1995 late Sh. Ramesh Bedi is annexed herewith as ANNEXURE A-1.

8. It is further averred that petitioner seeks to incorporate Para 14 A after Para 14 and be read as under:

14 A. That after filing of the Probate Petition on the basis of certified copy of the registered Will dated 03.12.1995 on 25.08.2023, while cleaning the store room, the petitioner found the two original Wills, one of his father Sh. Ramesh Bedi and another of his mother Smt. Sheela Devi lying in an envelop in an old file.

9. The petitioner seeks to amend Para 15 of the Probate Petition as under:

“15. That it is further submitted that the Petitioner was appointed one of the Executor of the Will dated 03.12.1995 of the deceased Testator and the same is last and only will of the deceased Testator”.

10. It is submitted by the petitioner that no prejudice shall be caused to the respondents in case the aforesaid amendments are allowed. It is further argued that the facts stated in the application have occurred after filing of the present Probate Petition and are necessary for the purpose of determining the real questions in controversy between the parties.

11. It is further argued that cross-examination of petitioner is yet to commence and the amendments are formal in nature and have been necessitated by the events occurring after the filing of the present petition.

12. Reply to the above said application has been filed on behalf of respondents by taking preliminary objections that the present application is nothing but mere misuse of the process of law. It is contended that contents of the present application are contrary to the other pleadings of the parties. It is further contended that even otherwise the petitioner has not shown any sufficient and reasons ground to invoke the provision of Order VI Rule 17 CPC after the commencement of the trial.

13. It is further contended that the petitioner filed a suit for partition, ejectment etc, before Hon'ble High Court of Delhi and has categorically pleaded that alleged Will has been stolen by his wife and son and he has also lodged a compliant in this respect against them before the concerned police station at that time before filing of the said suit. It is further contended that in the present petition, the petitioner has pleaded that he has lodged another complaint in the year 2020 regarding the stolen of the said Will.

14. On merit, all the contents of the application of the petitioner have been denied as wrong and it is averred that the petitioner has not disclosed about the lodging of the complaint in the year 2016, because the present petition of the petitioner is barred by limitation. It is further contended that the alleged amendment is nothing but to cover up the lacuna in the petition, which cannot be permitted at this stage. It is denied that no prejudice shall be cause to the respondents in case the present amendments are allowed and the amendments sought are formal in nature. It is further contended that the alleged amendment will go to the route of the controversies between the parties.

15. I have heard Id. Counsel for both the parties and perused the case file.

16. As per order 6 Rule 17 CPC, the court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just and all such amendments shall made as may be necessary for the purpose of determine the real questions in controversy between the parties. Provided that no application for amendment shall be allowed after the trial has commenced. Unless the court comes to the conclusion that in spite of due diligent, the party could not have raised the matter before the commencement of trial.

17. The Hon'ble Supreme Court of India in a case titled as **“Uday Shankar Triyar Vs Ram Kalewar Prasad Singh & Anr, (2006) 1 SCC, 75** has observed that procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice. It is further observed by Hon'ble Apex court that procedure a hand maiden to justice should never be made a tool to deny justice or perpetuate injustice by any oppressive or punitive use.

18. In the petition, the petitioner has averred that the original Will was lying in the Almira of the house of the petitioner but despite best efforts, he could not trace the same, at the time of filing of the Probate Petition and petitioner was under impression that the said original Will has been removed by respondents and he also got lodged NCR regarding the lost of the original Will on 13.03.2020. As per petitioner, he found the original Will in question on 25.08.2023, while cleaning the store room. The respondents have opposed the said application on the ground that in a plaint filed before the Hon'ble High Court of Delhi, the petitioner of the present petition has mentioned that the original Will has been stolen by the respondents. In the Probate Petition, the petitioner has mentioned in para no. 14 that it appears to him that the said original documents including the Will in question has been removed by Mrs Vandna Bedi and Mr. Ajay Bedi, wife and sons of the petitioner. The above said facts clearly established that the

petitioner has doubt upon the respondents regarding the removing the Will in question.

19. Ld. Counsel for the respondents has argued that there is no due diligence of the petitioner in moving the present application and the story of the petitioner of finding the Will is false. As per petitioner, the Will in question has been found lying in an envelope in an old file on 25.08.2023, and the present application has been filed by the petitioner on 18.09.2023. The said application has been filed without any delay after finding the original Will. There is no just reason to doubt the averment of the petitioner regarding finding original Will on 25.08.2023.

20. The sought amendments do not change the nature of the probate petition and do not take any vested right from the respondents. The above said amendments are explanatory in nature and consequential, due to finding of the original Will. As per section 294 of Indian Succession Act it is mandatory for the petitioner to file original Will in the court. The sought amendments do not cause any prejudice to the respondents as they would get right and opportunity to cross-examine the petitioner and other witnesses and the said amendments and original Will are relevant to decide the present Probate Petition.

21. In view of the above facts and observations, the application of the plaintiff is allowed subject to cost of Rs. 6,000/- to be paid to respondent no. 2 to 4 equally. The amended petition alongwith original Will is taken on record.

Announced in the open court
on 5th June, 2024

(SHIV KUMAR)
District Judge-02, Court no.127,
West Distt, Tis Hazari courts