

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

+ **Test Case No.16 of 2007**

% **Date of Decision: 06.05.2009**

Shri Gautam Thapar Petitioner

Through Mr.Arun Mohan, Sr. Advocate with
Ms.Chitra, Advocate.

Versus

State & Ors. Respondents

Through Mr.Ashval Vadera, Advocate for the
respondent No.3.

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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1. This is a petition under Sections 222 and 286 of the Indian Succession Act seeking probate of the Will dated 20.12.2004 as amended by Codicil dated 13.06.2006 of late Sh.Lalit Mohan Thapar who died at New Delhi on 17.01.2007.

2. The petition has been filed by Shri Gautam Thapar nephew of the late Shri Lalit Mohan Thapar. The petitioner has averred that the testator was a permanent resident of 40 Amrita Shergill Marg, New Delhi and that he died on 17.01.2007 at New Delhi. A copy of the death certificate has been filed by the petitioner.

3. The petitioner has averred that the testator died a bachelor and he did not have any children.. It is averred that his heirs for the sake of succession would be his surviving full blood sisters - Smt.Raj Mohini Srivastava, Respondent No.4; Smt.Prem Mohini Lal, Respondent No.5; Smt.Janak Mohini Kapur, Respondent No.7 – and his surviving full blood brothers – Shri Brij Mohan Thapar, Respondent No.3 and Shri Man Mohan Thapar, Respondent No.6. The testator is also stated to have a half blood brother, Shri Inder Mohan Thapar who has been impleaded as Respondent No.2. A genealogical table of the testator has been filed along with the petition.

4. The petitioner has also filed the details of the assets and liabilities left behind by the testator, which shows the total assets of the testator to be 69,83,23,905/-. The valuation reports from the Chief Revenue Authority of the immovable properties of the testator dated 23.08.2007 (Delhi), 23.08.2007 (Maharashtra) and 7.09.2007 (Himachal Pradesh) have also been received and are on record.

5. The notice of the probate petition was issued to all the near relations and a general notice was also published in the Delhi edition of 'Statesman' and 'Pioneer'. The petition is not contested by any of the legal heirs of the testator and all the respondents have filed their no objection to grant of Probate in respect of Will of the deceased. The affidavits of the legal heirs giving their no objections has been exhibited as exhibits Ex. P-5 to Ex. P-10.

6. In support of the contention of the petitioner that will dated 20.12.2004 as amended by Codicil dated 13.06.2006 is the last, legal and valid Will of Shri Lalit Mohan Thapar, the deposition on affidavit of the attesting witness Shri Vikas Mehta, Advocate dated 19.02.2008, exhibited as Ex PW 2/A, has been filed. He has categorically deposed that the testator, late Shri Lalit Mohan Thapar, had written 9 lines in page 6 of the will in his own hand and signed and also put his thump impression on the Will in his presence and in the presence of the other witnesses, Shri Netra Rana and Shri Vinod Kumar Sablok. He has also deposed that at the time of signing, the deceased was fully fit and was having full knowledge and understanding of the contents of the Will. He has also identified the signatures of the testator on the Will. He has also proved the registration of the will before the Sub-Registrar. He has also categorically deposed that the Codicil dated 13.06.2006 was signed by the testator in his presence and in the presence of the other witness,

Dr. Ashwini Chopra. The affidavits of the other attesting witnesses of the will have also been filed in support of the petition and has been exhibited as Ex P-11 and Ex P-13. The affidavit of Dr. Ashwini Chopra, the second witness to the codicil, has also been filed and exhibited as PW 3/A. He has deposed that the testator has signed the codicil in his presence and in the presence of the other witness, Shri. Vikas Mehta. He has also identified the signature of the testator in the Codicil and deposed that the testator was of a sound disposing mind at the time of execution of the will. The deposition of the attesting witness on affidavit was exhibited as Ex.PW2/A. The deposition of the petitioner Shri Gautam Thapar was also tendered and was exhibited as Ex PW1/A. The will dated 20.1.2004 was exhibited as Ex P-1 while the codicil dated 13.06.2006 was exhibited as Ex P-2 and death certificate as Exhibit P-3.

7. The other legal heirs of the deceased have not filed any objection to the grant of probate nor are there any other documents on record to dispute the veracity of the Will or the codicil and the averments made by the petitioner for grant of probate for the last will of the deceased.

8. From a perusal of the evidence produced by the petitioner it is inevitable to infer that the deceased, late Shri Lalit Mohan Thapar, was of a sound disposing mind on 20.12.2004 when he executed the Will

and on 13.06.2006 when he executed the codicil. It has been established that the deceased testator had signed the Will, Exhibit P-1 and the codicil Exhibit P-2 in the presence of the attesting witnesses. The attestation of the will and the codicil by the witnesses has also been proved.

9. In *R. Venkatachala Iyengar v. B.N. Thimmajamma and Others*, (1959) Supp. 1 SCR 426, the Supreme Court has laid down the following propositions bearing on the nature and standard of evidence required to prove a Will:

1. Stated generally, a Will has to be proved like any other document, the test to be applied being the usual test of the satisfaction of the prudent mind in such matters. As in the case of proof of other documents, so in the case of proof of Wills, one cannot insist on proof with mathematical certainty.
2. Since Section 63 of the Succession Act requires a Will to be attested, it cannot be used as evidence until, as required by Section 63 of the Evidence Act, one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive and subject to the process of the Court and capable of giving evidence.
3. Unlike other documents, the Will speaks from the death of the testator, and therefore, the maker of the Will is never available for deposing as to the circumstances in which the Will came to be executed. This aspect introduces an element of solemnity in the decision of the question

whether the document propounded is proved to be the last Will and testament of the testator. Normally, the onus which lies on the propounder can be taken to be discharged on proof of the essential facts which go into the making of the Will.

4. Cases in which the execution of the Will is surrounded by suspicious circumstances stand on a different footing. A shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the Will under which he receives a substantial benefit and such other circumstances raise suspicion about the execution of the Will. That suspicion cannot be removed by the mere assertion of the propounder that the Will bears the signature of the testator or that the testator was in a sound and disposing state of mind and memory at that time when the Will was made, or that those like the wife and children of the testator who would normally receive their due share in his estate were disinherited because the testator might have had his own reasons for excluding them. The presence of suspicious circumstances makes the initial onus heavier and therefore, in cases where the circumstances attendant upon the execution of the Will excite the suspicion of the Court, the propounder must remove all legitimate suspicions before the document can be accepted as the last Will of the testator.

5. It is in connection with Wills, the execution of which is surrounded by suspicious circumstance that the test of satisfaction of the judicial conscience has been evolved. That test emphasize that in determining the question as to whether an instrument produced before the Court is the last Will of the testator, the Court is called upon to decide a solemn question and by reason of suspicious circumstances the Court has to be satisfied fully that the Will has been validly executed by the testator.

6. If a caveater alleges fraud, undue influence, coercion etc. in regard to the execution of the Will, such pleas have to be proved by him, but even in the absence of such pleas, the very circumstances surrounding the execution of the Will may raise a doubt as to whether the testator was acting of his own free Will. And then it is a part of the initial onus of the propounder to remove all reasonable doubts in the matter.

10. Considering the facts and circumstances and the evidence led by the petitioner, it is apparent that the testator was of sound disposing mind at the time of execution of his last will dated 20.12.2004 and the codicil dated 13.06.2006. There are no suspicious circumstances regarding the last testaments of the deceased testator. All the yardsticks and test laid down by the Apex Court in R. Venkatachala Iyengar (supra) are fulfilled. There are no suspicious circumstances and this Court is satisfied that the will dated 20.12.2004 is the last will of Late Shri Lalit Mohan Thapar and that the codicil dated 13.06.2006 was also executed by the testator.

11. Consequently the petitioner has been able to prove that the deceased late Shri Lalit Mohan Thapar executed his last will dated 20.12.2004 and the codicil dated 13.06.2006 and consequently the probate for the will of Late Shri Lalit Mohan Thapar dated 20.12.2004 as amended by codicil dated 13.06.2006 is granted to the petitioner as the executor of the will under Section 276 read with Section 289 of the

Indian Succession Act. Probate be issued to the petitioner in respect of the properties detailed in the Annexure 'I' annexed with the petition in the Form set forth in Schedule VI of the Indian Succession Act subject to petitioner furnishing requisite Court-fees and necessary Bond with one surety. Accordingly, the petition is disposed of.

MAY 6th , 2009
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ANIL KUMAR, J.