

Radhika Lall vs State (Nct Of Delhi) on 26 March, 2025

Author: Manmeet Pritam Singh Arora

Bench: Manmeet Pritam Singh Arora

\$~9

*IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 26.03.2025

+ TEST.CAS. 32/2023 & I.A. 11369/2023
RADHIKA LALL

.....Petitioner

Through: Mr. Ashim Sood, Mr. Rhytham Buaria
and Mr. Ekansh Gupta, Advocates

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Rohit Kathuria, Mr. Dhruv
Varma, Mr. Sagar Chauhan, Adv. for
R- 2.

%

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA
JUDGMENT

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. The present petition has been filed under Section 278 of the Indian Succession Act, 1925 ('Act of 1925') seeking grant of Letters of Administration with respect to the estate of late Sh. Gaurav Kapoor ('deceased') which includes the only immovable property situated at D-1/12, Rajouri Garden, New Delhi-110027 (subject property).

2. For the purpose of disposal of the present petition, the following essential facts alone needs to be noticed.

3. Late Sh. Gaurav Kapoor passed away on 10.03.2023 and was aged 46 years and unmarried. It is stated that the decomposed body of the deceased was recovered by the police from his residence at D-1/12, Rajouri Garden, Delhi i.e., the subject property.

3.1. The Petitioner contends that she is entitled to the estate of the deceased being his Class II Legal Heir (being deceased's father's sister) falling within Entry VII in Class II of the Schedule under the Hindu Succession Act, 1956 ('Act of 1956'). The petition mentions that deceased left no heir in Class I or in Entries I to VI of Class II, and also there is no other surviving heir in the Entry VII.

3.2. The subject property stands in the name of deceased as recorded in the Status Report filed by the Station House Officer (SHO); Police Station (PS) Rajouri Garden, filed under the cover of index dated 01.09.2023. It is stated that the subject property was sealed by the Sub-Divisional Magistrate (SDM), Rajouri Garden vide order dated 14.06.2023 and is lying sealed. 3.3. It is stated that the back portion of the ground floor of the subject property consisting of two (2) rooms, one (1) kitchen, one (1) bathroom and verandah is occupied by tenant i.e., Mr. K.K. Berry and his family. It is stated that the deceased had filed a suit i.e., CS No. 705/2019 at Tis Hazari Court seeking eviction and possession against the said tenant; and the Petitioner is now pursuing the said proceedings.

3.4. It is stated that the first floor of the subject property is presently lying vacant. It is stated that the said portion of the property was earlier let out to Mr. Kamal Kapoor; however, he vacated the said portion and handed over the possession to late Sh. Gaurav Kapoor on 07.04.2020 and in this regard, a civil suit i.e., CS No. 664/2017 was filed.

3.5. As per the petitioner the subject property is the only asset in the estate of the deceased, which the Petitioner is aware of.

4. Pertinently, notice in this petition was issued on 10.05.2023 to the Respondent No. 1 i.e., State. This Court vide the said order directed the SDM concerned to file the valuation report. Further directions were issued for citations to be published in Hindustan Times, Delhi Edition and Navbharat Times, Delhi Edition. Lastly, the Court directed the Petitioner to file the death certificate of the deceased.

4.1. As per record, the SDM concerned has filed a valuation report dated 28.08.2023 and the value of the subject property recorded therein is Rs. 4,79,56,248/-

4.2. As per record, citations were published in Navbharat Times dated 11.07.2023 and in Hindustan Times dated 11.07.2023 as directed by this Court.

4.3. With respect to the death certificate the same was filed on record on 18.09.2023. In this regard, the learned Joint Registrar vide order dated 20.10.2023 issued directions for verification of the said death certificate. The Municipal Corporation of Delhi ('MCD') has filed a Status Report dated 06.01.2025, wherein (more specifically at para 5 and 6) it was stated that as per the birth and death register maintained by the Sub-Registrar, the entry of death of late Sh. Gaurav Kapoor was duly made and the death certificate placed on record by the Petitioner has been verified and the same is found to correct and genuine.

5. As per the order dated 06.03.2025, the Petitioner has been examined as PW-1 and evidence of the Petitioner has been closed. Further since no one appeared on behalf of the Respondent No.1 and the counsel for the Respondent No.2 stated that he does

not want to examine any witnesses, the Respondent evidence was also closed.

5.1. The Petitioner's statement was recorded on 06.03.2025 and the Petitioner tendered her affidavit of evidence which was exhibited as Ex.

PW1/A. The Petitioner in her affidavit of evidence has stated that the Petitioner, Mr. Krishan Lal Kapoor [deceased's father] and Mr. Man Mohan Kapoor were three children of Mr. Jagat Ram Kapoor and Mrs. Agya Kaur. It is further stated that Petitioner's father, Mr. Jagat Ram Kapoor died on 06.01.1986 and Petitioner's mother, Mrs. Agya Kaur died on 28.08.1988. 5.2. It is stated that Petitioner's elder brother, Mr. Krishan Lal Kapoor [deceased's father] died intestate on 31.03.1997 and his wife, Mrs. Madhu Kapoor [deceased's mother] died on 06.08.2011. 5.3. It is stated that Petitioner's other brother, Mr. Man Mohan Kapoor died unmarried and issueless on 06.07.2016.

5.4. It is stated that the Petitioner is the sole surviving legal heir of the deceased, being deceased's father's sister and therefore, she is entitled to the estate of the deceased under the Act of 1956.

5.5. As per the list of witnesses filed on behalf of the Petitioner dated 03.03.2025, Radhika Lall i.e., the Petitioner was the only witness to be recorded.

6. It is a matter of record and as also recorded in the order dated 12.02.2025 that no objections have been received from any individual qua the present petition and no other claimant of the subject property has come up.

7. In the facts noted above, where the Petitioner is the only Legal Heir of the deceased entitled to the subject property, there is no impediment in granting the Letters of Administration qua the subject property which stands in the name of deceased late Sh. Gaurav Kapoor, subject to compliances by the Petitioner.

8. Next, the learned Counsel for the Petitioner contended that this Court should not insist upon the Petitioner for furnishing an administration bond/surety bond for the administration of the estate late Sh. Gaurav Kapoor in the light of the fact that the present petition is uncontested and the Petitioner is the sole legal heir.

9. A conjoint reading of Section 219 and Section 375 of the Act of 1925 makes it apparently clear that the condition filing an administration bond is intended to indemnify or protect the interests of those who may be entitled to the entire or any part of the estate of the deceased. However, imposition of such mandate must be examined in light of facts of each case. Further a condition cannot be imposed arbitrarily, especially where the petition is uncontested.

10. This Court in catena of judgments and most recently in the case of Arvind Nand v. State¹ held as under:

"10. The settled case law, therefore, clearly lays down the following principles:

(1) The imposition of a condition for furnishing an indemnity/security is at the discretion of the Court. (2) Whenever the Court is of the opinion that a condition is required to be imposed due to any debts and the fact that there is a possibility of other claimants raising claims, the condition may be imposed.

(3) In every case involving the grant of a succession certificate, a mechanical approach of imposing a condition for furnishing the surety/security and insisting on the indemnity bond is not required.

(4) When an exemption from filing any surety is sought, the Court has to consider the entire conspectus and exercise its discretion depending on the facts of each case, in accordance with law.

2020:DHC:147 (5) As held by the ld. Division Bench of this Court in Rajesh Kumar Sharma (supra), the imposition of a condition is not mandatory.

11. In view of the above legal position, the Petitioner, being the sole legal heir and beneficiary of his parent's estate, and there being no objections from any quarter, is exempted from furnishing a surety. The succession certificate is directed to be issued expeditiously and, in any case, within a period of eight weeks from today."

(Emphasis supplied)

11. A co-ordinate bench of this Court in Richa Pardeshi v. State² was dealing with a case similar to the facts of the present case, wherein the petition was filed seeking grant of letters of administration qua the estate of deceased who died intestate. The petitioner therein sought an exemption from furnishing administrative bond being the sole beneficiary and legal heir to the estate of her late father. This Court while granting the relief sought for held as under:

"13. Learned counsel for the petitioner submits, and I think rightly so, that there is no reason why the enunciation of the law relating to aforesaid case dispensing with furnishing of administration/surety bond in the case of a sole beneficiary under a Will should not be made applicable to the case of a sole beneficiary upon whom the estate of the deceased devolves by intestate succession. The object of the law of Succession, be it testamentary or intestate in nature, is to enable the Court, to lend its seal of approval to the succession of the estate of the deceased. It is trite that the judgment given in the exercise of both testamentary and intestate succession is a judgment "in rem".

14. Indubitably, a greater degree of care is required in the case of intestate succession while appointing an administrator to take care of the estate of the deceased, but in all other respects the exercise of testamentary and intestate succession is predicated on the duty cast upon the Court to ensure that the estate of the deceased devolves in a proper manner upon the heirs of the deceased and is not frittered away. It is with this intentment that 2012 SCC OnLine Del 2978 Section 291 of

the Act requires furnishing of an administration bond both in the case of intestate succession and testamentary succession. As a matter of fact, the opening words of said Section are significant, which state "Every person to whom any grant of letters of administration, other than a grant under Section 241, is committed, shall give a bond to the District Judge with one or more surety or sureties, engaging for the due collection, getting in, and administering the estate of the deceased, which bond shall be in such form as the Judge may, by general or special order, direct."

15. In view of the aforesaid, it is crystal clear that to hold that Section 291 envisages the furnishing of an administration bond by a sole beneficiary or a sole legatee would lead to absurd consequences, for, the said sole beneficiary/sole legatee would then be standing surety for the estate of the deceased, which has exclusively devolved upon him, and it would be paradoxical to hold that a person can stand surety for himself.

16. In the result, the petition is allowed by granting Letters of Administration in favour of the petitioner, Smt. Richa Pardeshi, exempting the petitioner from furnishing of an Administration Bond."

(Emphasis supplied)

12. In the overall conspectus, considering the above noted law, the fact that the Petitioner is the sole surviving natural Legal Heir and also keeping in view that no objections of any individual claiming himself/herself to be the legal heir of the deceased has come on record, the Petitioner is exempted from filing the Administration/Surety Bond.

13. The Petitioner has also sought exemption from filing inventory under Section 317(1) of the Act of 1925 on the plea that she is the sole natural legal heir of the deceased. In view of the fact that the Petitioner is the sole natural legal heir of the deceased, the Petitioner is exempted from complying with the provisions of Section 317 of the Act of 1925. (Re. Rajesh Sondhi and Others v. State and Others³).

2016 SCC OnLine Del 3812 [paragraph 12]

14. In view of the above Letters of Administration qua immovable property i.e., D-1/12, Rajouri Garden, New Delhi-110027 are hereby granted in favour of the Petitioner. Registry is directed to issue Letters of Administration as per the valuation report filed by the SDM concerned in respect of the immovable property i.e., D-1/12, Rajouri Garden, New Delhi-110027 on paying requisite stamp duty and Court fees, if any.

15. Further as per the order of the SDM concerned dated 14.06.2023, the subject property has been sealed. In this regards the Petitioner is granted liberty to approach the SDM concerned with respect to the de-sealing of the subject property and hand over of possession, by filing an appropriate application. The SDM concerned is directed to deal with the said application of the Petitioner in accordance with law and preferably dispose of the said application within four (4) weeks.

16. In view of the above, the present petition is hereby allowed and the pending application stands disposed of.

MANMEET PRITAM SINGH ARORA, J MARCH 26, 2025/sk/rhc/MG Click here to check corrigendum, if any