

CANADA / JUDGMENT

Rajput Estate (Re)

2024 BCSC 1054

COURT

Supreme Court of British Columbia

DECIDED

28 May 2024

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2024 BCSC 1054 Rajput Estate (Re)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Rajput Estate (Re),

2024 BCSC 1054

Date: 20240528

Docket: P25602

Registry: New Westminster

In the Matter of the Estate of Gurdev Singh Rajput, Deceased

Before: Associate Judge Krentz

(appearing via videoconference)

Oral Reasons for Judgment

In Chambers

Counsel for the Applicant Niranjana Kaur Dhillon, appearing by videoconference:

S.S. Gill

Counsel for the Application Respondent Amandeep Kaur (appearing in person May 16, 2024; No appearance May 28, 2024):

G.S. Chaina

Place and Date of Hearing:

New Westminster, B.C.

May 16, 2024

Place and Date of Judgment:

New Westminster, B.C.

May 28, 2024

- [1] THE COURT: This is my decision in this matter. This application is with respect to the estate of Gurdev Singh Rajput who died on October 31, 2019. This is an application by Niranjana Kaur Dhillon, the wife of the deceased, as they married on December 25, 2016. This application is opposed by Amandeep Kaur, a resident of California and a daughter of the deceased.
- [2] As there are separate notices of dispute filed by the parties, I will not refer to either as disputant, as was done in this application, but rather I will use their first names, meaning no disrespect.
- [3] Shortly after the death of Mr. Rajput, Niranjana received a letter from a lawyer for Amandeep advising they were being retained as there existed a will naming Amandeep as the executor. The lawyer was Mr. Chodha. In January 2020, Mr. Gill, as counsel for Niranjana, wrote to that lawyer seeking particulars with respect to the will.
- [4] Having received no reply, Mr. Gill wrote again on March 10, 2020, requesting a response to his letter. Again, no reply was received from Mr. Chodha or his firm. Mr. Gill then filed a notice of dispute on March 31, 2020. The notice of dispute was served on Mr. Chodha's office on April 14, 2020.
- [5] In August 2022, Mr. Gill arranged to personally serve a citation on Amandeep to have her initiate a grant of probate based on the alleged will. The citation was served on Amandeep in California. Amandeep failed to commence an application for a grant of probate pursuant to the terms and timeline that are set out in the citation served on her.
- [6] Failing all attempts with respect to having Amandeep initiate probate and questioning whether there even existed a will, as she had not yet produced it, Niranjana filed an application for a grant of administration on May 1, 2023.
- [7] Amandeep filed a notice of dispute on December 18, 2023. The notice of dispute was filed by new counsel for Amandeep, that is Mr. Chaina, who also filed a notice of appointment indicating he was replacing Mr. Chodha as lawyer for Amandeep.
- [8] Amandeep has never filed a reply to Niranjana's notice of dispute or the citation. Even though Amandeep filed her own notice of dispute on December 18, 2023, and despite previous demands, Amandeep did not provide a copy of the alleged will until April 30, 2024, when it was provided with the responsive materials to this application. Also, it was not until April 29, 2024, that Amandeep filed in the Abbotsford registry a submission for an estate grant, even though she was served with the citation in August 2022.

- [9] Amandeep deposes in an affidavit that she retained a lawyer but most of the time the file was transferred between lawyers in that firm. She deposes she retained her current counsel in 2023; yet as I indicated, no steps were taken to seek a grant of probate until after this application was served. The alleged will of the deceased is one page and it is dated a week before his death. It gives all of his estate to Amandeep, despite the fact he had a surviving spouse and other children.
- [10] The witnesses to the will have provided affidavits confirming they witnessed the signing of the will.
- [11] Despite the allegations that Amandeep's previous lawyer failed to act on the file, the simple process of providing a copy of the will took almost five years from when the request was initially made.
- [12] With respect to further background to this matter, Niranjan provides the following in her affidavits. In her first affidavit, she deposes:

Shortly after the death of the Deceased ... Amandeep ... alleged ... that she [had] a will ... made by the Deceased appointing her as the executor and ... the sole beneficiary ...

...

During our years of marriage and up to the death of the Deceased, [he] never mentioned having or making a will ...

...

After [he] passed away, [Amandeep] in ... January 2020 contacted me via What's App and showed me pictures of her new salon being constructed it was located ... near a shopping mall [in California].

- [13] Niranjan says she requested on various occasions that Amandeep provide a copy of the will, but all requests were ignored. She deposes the deceased had issues with alcohol and drug abuse. He suffered from depression and it affected his judgment, cognitive state and capacity. She says she was surprised when Amandeep advised her that he had made a will and was further surprised that the will only made provisions for Amandeep.
- [14] Niranjan deposes that in April 2023, her lawyer conducted a search with Vital Statistics. The result of the search indicated there was no will. She says failing all attempts to have Amandeep initiate probate and questioning whether there even existed a will, she filed an application for the grant of administration in May 2023.
- [15] Niranjan further deposes that due to the fact that Amandeep never replied to the notice of dispute or the citation, she retained a realtor to sell a property of the deceased that is located on 128th Street in Surrey. The property has been sold for the sum of \$2,235,000 and a deposit of \$110,000 has been paid. A condition of the sale is that she obtain a grant of probate or letters of administration.

- [16] In her second affidavit, Niranjana deposes that after reviewing a copy of the will, she believes it is not legitimate and that the signature of the deceased appears to be doubtful. She says that on October 30, 2019, she dropped the deceased off at his vehicle, which he had left in Surrey the evening before. Previously, they had returned to their home in Abbotsford on October 29 after a family dinner, at which time the deceased had drank too much, so she drove them home.
- [17] She further deposes she spoke to the deceased late on October 30. The next day he was found by the police having passed away and the police came to their home in Abbotsford to advise her. She later was told that the reason for his death was caused by excessive consumption of alcohol and depression medications. She says in the days prior to his death, he never mentioned creating a will.
- [18] Niranjana deposes that the deceased has two other daughters and one son. One daughter and the son are disabled. The other daughter cares for both of them. She says it is odd that the alleged will makes no mention of the other children.
- [19] She says the alleged will is witnessed by a Mr. Grewal and Mr. Mann. She says both of these individuals are unknown to her. Since her marriage to the deceased, she has never met these individuals nor did the deceased ever mention their names to her. She points out that the deceased owned various other assets, and none of these assets are listed or mentioned in the will. It includes residential property in Delta, another property in Bellingham, and assets of a driving school business.
- [20] Niranjana further deposes that she has seen the deceased endorse many documents and cheques prior to his death. The signature on the will appears inaccurate and doubtful. She provides in her affidavits various documents showing his signature in strong penmanship and his signature is leaning towards the right, both of which are not evident in the alleged will.
- [21] Niranjana seeks the following orders: a declaration that she is the spouse of the deceased; a declaration that she is a person referred to as a successor; a declaration that she is the proper person to administer the estate; and that the notice of dispute filed by Amandeep be removed.
- [22] In opposing the application, Amandeep submits that at the funeral, Mr. Mann, one of the witnesses for the will, provided her with the original will and that she organized and paid for her father's funeral.
- [23] Amandeep further alleges that the relationship between Niranjana and the deceased was strained and that Niranjana was having an affair with a tenant. She further alleges that shortly before his death her father told her he wanted to get away from Niranjana and move to the States to be with her, and he wanted to leave all of his estate to her.

- [24] Neither Amandeep or Mr. Mann in their affidavits provide any information as to why the will was retained by Mr. Mann, as opposed to the deceased, or how it otherwise came into Mr. Mann's possession so that he could give it to Amandeep.
- [25] Niranjana submits that she is not seeking to distribute any of the estate but requires, as I indicated earlier, an order so that sale of the Surrey property can be completed this week.
- [26] I will now review Niranjana's position with respect to this application. She notes that pursuant to s. 23(2)(a) of the Wills, Estates and Succession Act, S.B.C. 2009, c. 13 [WESA], that if a person dies without a will and without leaving a surviving spouse, the intestate estate must be distributed to the descendants.
- [27] The notice of dispute filed by Amandeep was after the expiration of time that is set out in the citation that was delivered to her.
- [28] Niranjana submits that Amandeep has failed to comply with the timeline specified in the citation or to carry out her duties to administer the estate in a timely and efficient manner, if in fact she is the executor of the deceased's estate. Niranjana submits that Amandeep's inordinate delay, negligence and omissions have and will continue to harm the estate.
- [29] In *Berlinguette Estate (Re)*, 2022 BCSC 1098, the deceased died intestate. The surviving children filed a notice of dispute, and one of the children applied to remove the dispute and for an order declaring her as the administrator of the estate.
- [30] The court determined that the notice filed by the respondents need not be removed as the applicant should not be appointed as administrator. The court gave reasons for declining to appoint the applicant, which included:

The heart of this application is whether Ms. Rodrigues can properly act as a disinterested and neutral administrator of [the] estate even though she is in litigation against her siblings regarding how the estate should be distributed and whether Ms. Berlinguette's house should form part of the estate.

- [31] The court found that Ms. Rodrigues should not be appointed as the estate administrator, given her interest in her litigation and that she appears to be neither disinterested or neutral in respect of the outcome of the distribution of her mother's estate.
- [32] In *Berlinguette*, the court concluded that since Ms. Rodrigues should not be appointed administrator, it follows that the notice of dispute that was filed by the other respondents need not be removed. The court also went on to state that:

The only consideration on an application to remove a notice of dispute is whether to do so is in the best interests of the estate.

- [33] In *El-Adams Estate (Re)*, 2022 BCSC 75, Justice Forth denied an application for administration as she found the applicant to be inappropriate to act in the best interests of the estate, although she recognized that there were aspects of the estate that needed immediate attention and as such, an administrator should be appointed.
- [34] In the case before me, Niranjana does not seek to distribute the estate but rather seeks administration in order to complete at this time the sale of the Surrey property. Ultimately, this Court will need to determine the validity of the alleged will naming Amandeep as the sole beneficiary. The question to be determined today is who should be appointed as administrator at this time as between Niranjana and Amandeep.
- [35] In exercising its discretion to appoint an administrator, the court must consider the best interests of the estate and all persons interested in the estate. The court should appoint an administrator who is likely best able to convert the estate to the advantage of those who are interested in it (*Flores v. Mendez*, 2014 BCSC 951).
- [36] An administrator must act with detachment and even-handedness, and without animosity. An administrator should play a neutral role and not pick sides between the beneficiaries and should be indifferent as to how the estate is to be divided (*Kolic Estate (Re)*, 2016 BCSC 1312).
- [37] The difficulty the court has is it cannot be said that Niranjana would be playing a neutral role and may be indifferent. However, she does bring the other qualities that are required in appointing an administrator, namely, that she is likely the best able to convert the estate to the advantage of those who are interested in it.
- [38] Amandeep's position is that she was appointed by her father as the executor of the estate. However, in the five years since his death, she has taken no steps until recently to seek a grant of probate. This is despite being served with various notices requiring her to act with some dispatch in the interests of the estate.
- [39] This is not an estate of modest value. As I indicated, the sale that is due to complete this week with respect to the Surrey property is for \$2.23 million and there is other real estate and assets related to a business.
- [40] The law requires the court to appoint an administrator who is likely to convert the estate to the advantage of those who are interested in it. That may include as interested parties, in addition to Amandeep and Niranjana, the other children of the deceased. Accordingly, on the facts before me and in applying the law, I find that Niranjana is the appropriate person to administer the estate, so I will make the following orders.
- [41] The court declares that the applicant Niranjana Kaur Dhillon is the spouse of the deceased pursuant to s. 23(2)(a) of WESA.
- [42] The court further declares and orders that Niranjana Kaur Dhillon is the proper person to administer the estate of the deceased.

- [43] However, I further order, as administrator of the estate, Niranjana is not entitled to distribute any portion of the residue of the estate to proposed beneficiaries until further order of this Court.
- [44] With respect to the removal of Amandeep's notice of dispute, Rule 25-10(10) and (11) are meant to ensure that notices of dispute are not permitted to act contrary to the best interests of the estate or to prevent administration from being delayed indefinitely. Accordingly, so that Niranjana may act as the administrator, I further make the order sought in para. 4 of the notice of application, which is that Amandeep's notice of dispute is to be removed.
- [45] Submissions on costs?
- [46] CNSL S. GILL: Your Honour, I submit that Ms. Niranjana Kaur Dhillon has been largely successful as it relates to the orders sought. I think it would be appropriate, as it relates to the application that is before you today, that she would be awarded costs of this application.
- [47] CNSL S. GILL: Your Honour, I've attempted to contact Mr. Chaina on two occasions. I did also send him the link as it relates to this morning's proceedings but unfortunately he has not appeared before us today.
- [48] THE COURT: Okay. Thank you. I will order costs of this application to the applicant. Thank you.
- [49] CNSL S. GILL: Thank you, Your Honour.

"Krentz A.J."

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