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IN THE HIGH COURT OF DELHI AT NEW DELHI

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TEST.CAS. 35/2010

PREETI JAIN & ANR

..... Petitioners

Through Mr. T.P.S. Kang, Advocate.

versus

STATE & ORS

..... Respondents

Through Nemo.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

ORDER

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08.11.2010

1. This joint petition seeks probate in respect of a Will dated 18th April, 2000 made by Mrs. Sudesh Jain (hereinafter called "the Testatrix").
2. The first petitioner is the daughter-in-law of the testatrix and the second petitioner is the son of the first petitioner. It is submitted that by the Will, the testatrix had made a dispositions of her properties which includes House No.190, Tagore park, Model Town, Delhi, in favour of the petitioners. A copy of the death certificate in support of demise of the testatrix is annexed with the petition. The petition also discloses the names of the other legal heirs and representatives of the testatrix. They have been impleaded as Respondent Nos. 2 to 5. It is submitted that the said legal representatives/respondents have no objection to the grant of probate.

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3. The Will, produced as Annexure P-1 and formally exhibited as PW-1/A on 4.10.2010 is stated to have been attested by Mr. S.B. Mathur and one Mr. Sudama Arora. It is stated that the suit property was the testatrix's self-acquired property and that she wished to bequeath it to the present petitioners. The affidavit of one of the attesting witnesses Shri S.B. Mathur was filed in compliance of the provisions of Section 281 of the Indian Succession Act at the time the present proceeding was initiated. Said Shri S.B. Mathur later deposed in favour of the Will and identified the signatures of the testatrix as well as his signatures. By his statement dated 4.10.2010, Shri Mathur, PW-1 submitted that the testatrix had signed the Will in his presence and in the presence of Mr. Sudama Arora. The other attesting witnesses and that both of them had signed in the presence of each other and the testatrix.

4. Pursuant to the notices issued in these proceedings, respondents No.2 to 5 appeared and filed no objection statements of the affidavits. The statement of Shri Rohit Jain, the fifth respondent stating that he had no objection to the grant of probate to the present petitioner was recorded on 4.10.2010. Likewise, the statements of the other respondents i.e. respondents No.2 to 4 Shri, Bhushan Jain, Shri Vikas Jain and Shri Gaurav Jain were recorded on 1.11.2010. They too deposed that they had no objection to the grant of probate to the present petitioner and further supported the affidavits filed by them.

5. Having considered the entire material and the pleadings on record, the Court is satisfied that the testatrix signed the Will in accordance with law and that the same was duly attested as deposed by the attesting witness Shri S.B. Mathur. In the circumstances,

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the Court sees no impediment in the grant of probate to the petitioner and accepting the Will as having been duly signed. The Court at the same time notes that the testatrix did not constitute or nominate any executor. In the circumstances, by virtue of Section 235 of the Indian Succession Act, the Court is of the opinion that the first petitioner should be appointed as Administrator, to carry out the mandate in the Will.

6. The petitioner be issued Letters of Administration along with copy of the Will to be issued in favour of the first petitioner subject to her furnishing Administration and Security bonds to the satisfaction of the Registrar. The petitioner shall also pay the differential Court fees between what was paid and the amount payable pursuant to the valuation granted by the Revenue Authority for a sum of Rs.89,50,140/-.

7. List before the Joint Registrar on 15th November, 2010 for further proceedings to enable the petitioner to take steps in accordance with the directions. The petition Test Cas No.35/2010 is allowed in the above terms.


S. RAVINDRA BHAT, J

NOVEMBER 08, 2010
vk.

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