

* **IN THE HIGH COURT OF DELHI AT NEW DELHI** 36

Date of decision: 05th May, 2010

+ **Test Case No.37/2007**

K.M.S. KHAN

..... Petitioner

Through Ms. Reema Kalra, Adv.

versus

STATE

..... Respondent

Through Mr. Harish Malhotra, Sr. Adv. with Ms.
Tanuj Khurana, Adv. for R-2 & 4.
Mr. Rajshekhar Rao, Adv. for Ms. Anju
Kapoor & Ms. Kamlesh Maker
Ms. Sujata Kashyap, Adv. with
Ms. Deepa Tiwari, Adv. for R-7.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

1. Whether reporters of local papers may be allowed to see the Judgment? *No*
2. To be referred to the Reporter or not? *No*
3. Whether the judgment should be reported in the Digest? *No*.

GITA MITTAL, J (Oral)

1. The present petition has been filed under Section 276 of the Indian Succession Act, 1925 for grant of probate of the Will dated 9th May, 2006 of late Shri Vishwanath Khanna, son of late Shri Ram Narain stated to be permanent resident of 8-B, Rajpur Road, Delhi. The petition has been filed by Shri K.M.S. Khan who was appointed executor under the said Will and testament.

2. The petitioner has given the details of the surviving legal heirs of the deceased Shri Vishwanath Khanna in para 5 of the petition. Notices of the petition were duly issued to these legal heirs. Notices of the petition were also issued to the Chief Controlling Revenue Authority and public notice was

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directed and published in the newspaper "Statesman", (Delhi, Pune and Bangalore Edition) by the order passed on 13th July, 2007.

3. The record shows that notices were duly served and the legal heirs have put in appearance in the matter. Public notice was also published as directed. No objections have been received from any member of the public.

4. It requires to be noticed that objections to the said Will were originally filed by three daughters of the deceased namely Mrs. Kamlesh Maker, Ms. Rajni Suri & Ms. Anju Kapur and two sons Shri Mahesh Khanna and Shri Mukesh Khanna.

5. The legal heirs of the deceased Shri Vishwanath Khanna were referred to mediation by an order dated 22nd December, 2009 passed in CS (OS) No.113A/2001. With the intervention of mediator of the Delhi High Court Mediation & Conciliation Centre, the parties have arrived at a settlement which has been placed on record in the said suit, also listed today.

6. In view of the settlement arrived at between the parties, the objectors in the present case namely Mrs. Kamlesh Maker, Ms. Rajni Suri & Ms. Anju Kapur, Shri Mahesh Khanna & Shri Mukesh Khanna, sought permission to withdraw the same. These legal heirs also filed affidavits accepting the due execution and validity of the Will dated 9th May, 2006 as having been duly executed by Late Shri Vishwanath Khanna as his last Will and testament. It is stated on their behalf that they have no objection if the probate of the said Will is granted to the petitioner. Shri Mahesh Khanna and Shri Mukesh Khanna also filed affidavits to this effect.

As such, all objections which had been in the present case were permitted to be withdrawn by the order dated 23rd April, 2010.

7. The petitioner has stated that late Shri Vishwanath Khanna executed his last Will and testament on 9th May, 2006 (Exh.PW 1/1) with regard to his

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entire estate in the presence of Shri Rajinder Singh and Shri Dev Sharma who are attesting witnesses thereto. The Will was registered vide Registration No.2276 in Book No.3 Volume No.606 at pages 123 to 130 with the office of the Sub-Registrar at Kashmere Gate, Delhi. The original registered Will has been enclosed with the present petition.

8. Perusal of the Will Exh. PW 1/1 would show that the testator Shri Vishwanath Khanna had appointed Shri K.M.S. Khan, the petitioner herein as the executor of the Will.

9. Late Shri Vishwanath Khanna is stated to have expired on the 7th January, 2007. The original death certificate issued by the Municipal Corporation of Delhi has been proved on record as Exh. PW 3/1.

10. The petitioner has enclosed with the petition as annexure 'C' a list of all movable and immovable properties which form the estate of late Shri Vishwanath Khanna which are the subject matter of the bequests made by him in the aforesaid Will.

11. Shri Rajinder Singh Jyala and Shri Dev Sharma have appeared before this court on 24th April, 2010 as PW 1 & PW 2 respectively and have supported their testimonies which were filed in the form of affidavit evidence (Exh. PW 1/A and PW 2/A respectively). The affidavits have been sworn on 23rd April, 2010. Both the witnesses have explained their respective intimacy with the deceased Shri Vishwanath Khanna. It is stated that Shri Vishwanath Khanna had already got his Will and testament (Exh. PW 1/1) prepared when he had called the said two witnesses. Apart from these two persons, Smt. Brij Rani Khanna, widow of the testator, Shri K.M.S. Khan-the present petitioner and one Shri U.K. Maurya are also stated to have been present at the time of execution of the said Will.

12. In their depositions, the witnesses confirm that the testator had

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signed the Will on 9th May, 2006 on each page of the document in their presence at his residence. PW 1-Shri Rajinder Singh Jyala and PW 2-Shri Dev Sharma thereafter signed the Will as witnesses in the presence of the testator and each other.

13. The two attesting witnesses had accompanied the testator Shri Vishwanath Khanna to the office of the Sub-Registrar No.1 at Kashmere Gate, Delhi along with Smt. Brij Rani Khanna and Shri K.M.S. Khan. For the reason that the deceased testator was unable to climb stairs and no lift was available, the Sub-Registrar was requested to come to the ground floor. Shri Vishwanath Khanna is stated to have duly submitted an application in this behalf which was presented by Shri K.M.S. Khan on 9th May, 2006. The Sub-Registrar fully satisfied himself from Shri Vishwanath Khanna about the due execution of the Will and thereafter obtained the signatures and thumb impressions of the testator as well as the attesting witnesses. The Sub-Registrar made the endorsement of registration of the Will only thereafter.

14. Perusal of the Will would show that the testator has carefully drawn the same and made bequests of his movable and immovable properties thereunder. The petitioner has duly proved the execution of the Will dated 9th of May, 2006 (Exh.PW 1/1) by late Shri Vishwanath Khanna as his last Will and testament in the presence of the attesting witnesses PW 1 & PW 2.

15. All legal heirs of the deceased testator have made statements confirming the valid execution and confirmed that the same is the last Will and testament of the deceased Shri Vishwanath Khanna.

16. In view of the above, it is held that the document dated 9th May, 2006 is the validly executed last Will and testament of Shri Vishwanath Khanna who died at Delhi on the 7th of January, 2007. The deceased has also appointed Shri K.M.S. Khan the petitioner herein, as the executor of the said

Will.

Issue no.1 is accordingly answered in favour of the petitioner.

I, accordingly, direct issuance of the probate of the Will dated 9th of May, 2006 (Exh.PW 1/1) to the petitioner subject to his furnishing the requisite administration bond and one surety bond as well as the depositing the court fee with regard to the valuation of the properties which form part of the estate of the Will.

This petition is allowed in the above terms.

MAY 05, 2010
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Gita Mittal
GITA MITTAL, J