

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

+ **TEST CAS.43/2011**

SWARAN SINGH

..... Petitioner

Through: Mr. Pramod Ahuja, Advocate.

Versus

STATE

..... Respondent

Through: None.

Date of Judgment: 8th October, 2012

CORAM:

HON'BLE MS. JUSTICE REVA KHETRAPAL

ORDER (ORAL)

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IA No.9861/2012

In view of the fact that the petitioner has since placed on record the original Will dated 23.03.2007, the present application for summoning of the witness as mentioned in the application to prove the certified copy of the aforesaid Will has become infructuous.

Dismissed as infructuous.

TEST CAS.43/2011

1. The petitioner has filed the present petition under Section 272 of the Indian Succession Act, 1925, seeking probate of the Will dated 23.3.2007 of Late Sh.Om Prakash Sahni.
2. It is averred in the petition that the deceased Late Sh.Om

Prakash Sahni died on 31.1.2008, leaving behind a Will dated 23.3.2007, whereby he bequeathed his immovable property bearing Khasra No.259/2, measuring 5 Bighas 11 Biswas situated in Village Rangpuri, Tehsil Mehrauli, New Delhi in favour of the petitioner. The Will dated 23.3.2007 is stated to be executed by the testator in the presence of two witnesses, namely, Sh.Manjit Singh and Sh.Satish Grewal.

3. Notice of the filing of the petition was issued to the State and to Sh. Siddhanth Sahni, son of the deceased testator, the only legal heir left behind the testator, in response to which Sh. Siddhanth Sahni has filed his 'No Objections' to the grant of probate in favour of the petitioner. Publication of citation was also got effected in the Delhi edition of the 'Statesman' dated 23.01.2012, copy whereof is placed on record. No objection whatsoever to the grant of probate in respect of the Will dated 23.3.2007 have been received from members of general public. Notice was also issued to the concerned Chief Revenue Controlling Authority for Valuation Report, which has been received from the Tehsildar, Vasant Vihar, valuing the property bearing No.259/2 (5-11), Village Malikpur Khoi, Tehsil Vasant Vihar, New Delhi to be in the sum of Rs.61,28,125/-.

4. Petitioner has tendered in evidence his affidavit by way of evidence, and affidavit by way of evidence of Sh.Manjit Singh, one of the attesting witnesses to the Will, which are exhibited as Ex. PW 1/A and Ex. PW 2/A respectively. PW1, Sh. Swaran Singh, the petitioner herein, in his evidence by way of affidavit, Ex. PW 1/A, has reiterated the contents of the petition and proved on record the original death

certificate of the deceased as Ex. PW 1/1 and the 'No Objection' filed by the son of the deceased testator as Ex. PW 1/2.

5. PW2, Sh. Manjit Singh, in his evidence tendered by way of affidavit, Ex.PW 2/A, has deposed that he knew the deceased personally as he was working with him. He stated that the testator Late Sh.Om Prakash requested the deponent to come to his residence as he intended to execute a Will in favour of Sh. Swaran Singh and requested the deponent to sign as one of the witnesses. On the morning of the next day, the deponent reached the residence of the testator and thereafter, the testator alongwith the deponent went to the office of the Sub Registrar, Kapashera, New Delhi. The Will was got drafted by one of the advocates and the photograph of the testator was affixed on the Will. PW-2 further deposed that the deceased testator was mentally and physically fit and was of sound mind to execute the Will and had signed the Will at two places in the presence of the witnesses, who had also signed in the presence of the executant. He identified the signatures of the testator on the Will at Points 'A' and 'B'. The deponent identified his own signatures on the Will at points 'C' and 'D', and the signature of the other attesting witness, namely, Sh. Satish Grewal, who also signed in the presence of the deponent as well as the executant at Point 'E'. He deposed that the Will was executed by the testator without any pressure, coercion or fraud on him, in any manner. Original Will dated 23.3.2007 was proved on record by PW2 as Ex PW 2/1.

5. The evidence of the petitioner is unrebutted on record. The only legal heir of the testator, Sh.Siddharth Sahni has filed his 'No

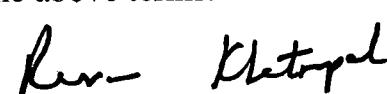
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Objection' to the grant of probate of the will propounded by the petitioner, duly supported by an affidavit, admitting the genuineness, authenticity and correctness of the Will dated 23.3.2007, executed by his father in favour of the petitioner.

6. In view of the aforesaid, the due execution of the Will dated 23.3.2007 of Late Sh. Om Prakash Sahni stands established on record. This Court is satisfied that the testator - Shri Om Prakash Sahni at the time of the execution of the Will was of sound disposing mind and had executed the Will in the presence of the attesting witnesses and the attesting witnesses had signed the Will in the presence of the testator and in the presence of each other. The Will in question is duly witnessed and registered in the office of Sub-Registrar-IX, New Delhi vide Registration No.232 in book No.3, Volume No.420 at pages 20 to 21 on 23.03.2007. Though probate of the Will in question cannot be granted to the petitioner in view of the statutory bar contained in Section 222 of the Indian Succession Act, there is no impediment in granting Letters of Administration with Will annexed in his favour. Furthermore, the petitioner is the only beneficiary named in the Will with respect to the property mentioned therein and is not required to furnish administration/surety bond as envisaged under Section 291 of the Indian Succession Act, 1925, in light of the judgments of this Court rendered in the cases of *Richa Pardeshi Vs. State, 2012 (139) DRJ 92* and *Sanjay Suri Vs. State and Ors., AIR 2004 DELHI 9*.

7. Accordingly, the present petition is allowed by granting Letters of Administration in respect of the Will dated 23.03.2007 in favour of

the petitioner in respect of the property mentioned in the Will, 
exempting the petitioner from furnishing of an Administration Bond.

8. The petition stands disposed of in the above terms.


REVA KHETRAPAL, J.

OCTOBER 08, 2012

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→ Fresh IA 13208/13 for
clarification/modification
of above order filed.

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+ TEST.CAS. 43/2011

SWARAN SINGH

..... Petitioner

Through: Mr. Pramod Ahuja with Mr. Gaurav
Sharma, Advocates

versus

STATE

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

23.08.2013

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I.A. No.13208/2013

This application has been filed by the petitioner to seek modification/clarification in the order dated 08.10.2012, whereby probate was granted by this court in respect of the registered will dated 23.03.2007 of late Sh, Om Prakash in favour of the petitioner.

The submission of petitioner is that the testator had bequeathed his agricultural land which was 10/57 share in the land admeasuring 28 Bighas 10 Biswas, details whereof are mentioned in the will itself. The petitioner submits that even though the will itself mentions that the said share is equal to 5 Bighas, due to typing/clerical error in the petition, the petitioner had

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incorrectly mentioned the area as 5 Bighas 11 Biswas. The petitioner submits that on account of the said error, in the final order dated 08.10.2012 granting probate, the area of the land has been mentioned as 5 Bighas 11 Biswas, whereas the same should be 5 Bighas only.

I have perused the original will Exh. PW-2/1. The said will mentions the area of the land bequeathed as 5 Bighas. The error committed by the petitioner in noting the said area as 5 Bighas 11 Biswas is patent. The petitioner is seeking reduction of the area to 5 Bighas and, therefore, no prejudice can be suffered by any other person. The petitioner has already deposited the court fees on the basis of the valuation report for 5 Bighas 11 Biswas.

In these circumstances, I am inclined to allow this application. The area of the land bequeathed be read as 5 Bighas in place of 5 Bighas 11 Biswas in the order dated 08.10.2012.

Since the petitioner is not seeking refund of any part of the court fees, no fresh valuation report is necessary and the probate be drawn on the court fee filed by the petitioner, if the same is found to be in accordance with the valuation already placed on record.

Application stands disposed of.



VIPIN SANGHI, J.

AUGUST 23, 2013

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