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

+ TEST.CAS. 32/2011

% *Judgment dated 26.03.2014*

SHANKHO MITRA AND OTHERS Petitioners

Through : Mr.Nitinjya Chaudhry, Adv.
along with petitioners

versus

THE STATE

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. Present petition has been filed by the petitioners under Section 278 read with Section 218 of the Indian Succession Act, 1925, for grant of Letters of administration in their favour in respect to the estate of Km.Chhaya Mitra.
2. Petitioners no.2 and 3 are present in Court. They are duly identified by their counsel. They submit that they have no objection if the letters of administration are granted in favour of petitioner no.1.
3. As per the petition, Km.Chhaya Mitra was last seen at her residence on 5.2.1999, when she was approximately 61 years of age. Mr.Shyamal Kumar Mitra was the only real brother of Km.Chhaya Mitra. Mr.Shyamal Kumar Mitra was the father of petitioners no.1 and 2 and husband of petitioner no.3. Further, as per the petition, as Km.Chhaya Mitra could not be traced, on 6.3.1999 information was sent to the Missing Persons Squad at New Kotwali, Darya Ganj, New Delhi, by Mr.Shyamal Kumar Mitra about the disappearance of Km.Chhaya Mitra. A missing report was also

lodged by Mr.Shyamal Kumar Mitra vide letter dated 8.3.1999 to the In-charge, Police Post, Surya Nagar, Ghaziabad. An advertisement together with photograph of Km.Chhaya Mitra, with regard to her missing, was published in the Times of India and the Navbharat Times, both dated 10.3.1999 as also in Daily newspaper Hindustan Times on 25.3.1999 by Mr.Shyamal Kumar Mitra. Mr.Shyamal Kumar Mitra also published an advertisement in a Bengali Newspaper, namely, Ananda Bazar Patrika on 10.7.2006, Indian Express and Jansatta on 11.8.2006 with regard to disappearance of Km.Chhaya Mitra and also declaring that he would be taking legal steps to manage the estate of Km.Chhaya Mitra and any person claiming to be her legal heir or knowing her whereabouts may come forward and inform him within forty days. Despite advertisements being published and police complaints having been made, Km.Chhaya Mitra could not be traced.

4. Learned counsel for the petitioners submits that since Km.Chhaya Mitra was unmarried and her parents had pre-deceased her, her only brother would be entitled to inherit the estate of Km.Chhaya Mitra in terms of Section 15 (1)(d) of the Hindu Succession Act, 1956.
5. Notice of this petition was issued to the State and to the Chief Revenue Controlling Authority on 26.4.2011 to assess the value of the estate of the deceased and to submit a report. Citation was also published in the Statesman, Delhi Edition. Valuation report has been filed.
6. The plaintiffs have filed evidence by way of affidavit of plaintiff no.1, Sh.Shankho Mitra, PW-1, who has deposed on the lines of the present petition. In the affidavit, PW-1 has deposed that Km.Chhaya Mitra, aged about 61 years, was last seen alive at the residence of the petitioners, had gone missing on 05.03.1999, leaving behind two notes and has not been heard of since then. The said notes have been marked as **Ex. PW1/1** and

Ex. PW1/2. He further deposed that Sh.Shyamal Kumar Mitra was the only real brother of Km.Chhaya Mitra. He was also the father of the petitioner Nos. 1 & 2. Petitioners Nos. 1 & 2 are brother and sister while the petitioner No.3 is their mother.

7. PW-1 has further deposed that his father, Sh.Shyamal Kumar Mitra, initially searched for Km.Chhaya Mitra everywhere but was unable to trace her whereabouts. On 06.03.1999, Sh. Shyamal Kumar Mitra also wrote to the Missing Persons Squad at New Kotwali, Darya Ganj, New Delhi, about the disappearance of Km.Chhaya Mitra. The said report has been marked as **Ex.PW1/3**. Thereafter, the father was constrained to lodge a missing person report with the local police, vide his letter dated 08.03.1999, to the In-charge, Police Station, Surya Nagar, Ghaziabad. The said missing person report has been marked as **Ex. PW1/4**.
8. It is further deposed by PW-1 that Sh.Shyamal Kumar Mitra published an advertisement with the photograph of Km.Chhaya Mitra regarding her disappearance in the Times of India, and the Navbharat Times, both dated 10.03.1999. The said advertisements have been marked as **Ex. PW1/5** and **Ex. PW1/6**, respectively. The Daily newspaper Hindustan Times published the news of the disappearance of Km.Chhaya Mitra, with her photograph in its issue dated 25.03.1999. The said advertisement has been marked as **Ex.PW1/7**. Sh.Shyamal Kumar Mitra published further advertisement in the newspapers published in English, Hindi and Bengali regarding the disappearance of Km.Chhaya Mitra, in the year 2006, declaring that he would be taking legal steps to manage her estate, and any person claiming to be her legal heir or knowing her whereabouts may come forward and inform him within 40 days. One such advertisement was published by the Sh. Shyamal Kumar Mitra on 10.07.2006 in the Ananda Bazar Patrika (Bengali). The said advertisement has been marked

as **Ex.PW1/8**. Two other advertisements to the same effect were simultaneously published on 11.08.2006 in the Indian Express (English) and Jansatta (Hindi). The said advertisements have been marked as **Ex. PW1/9** and **Ex. PW1/10** respectively.

9. Mr.Shanko Mitra has further deposed that none of the advertisements published by Sh.Shyamal Kumar Mitra elicited any response. No one came forward with any information about the whereabouts of Km.Chhaya Mitra or came forward to claim himself/herself to be the legal representative or legal heir of Km.Chhaya Mitra. No one came forward either with any Will or other testamentary instrument claiming it to have been executed by Km. Chhaya Mitra. The result of the search of the police was no better than that of Sh. Shyamal Kumar Mitra and he was finally informed by Ghaziabad Police vide letter dated 03.08.2006 that they had failed to trace Km.Chhaya Mitra. The said report has been Exhibited as **Ex. PW1/11**. He has next deposed that the Principal of Zakir Husain Post Graduate Evening College had written a letter dated 13.09.1999 to his father requesting him to inform them about missing Km.Chhaya Mitra and further requested for a copy of FIR. The said letter has been marked as **Ex. PW1/12**. He has also deposed that his father, Sh.Shyamal Kumar Mitra, had written a letter to the Principal of Zakir Hussain College (Evening) to know the last date of her reporting to the College and up to which date her salary had been paid. The said letter has been marked as **Ex. PW1/13**. the Principal of Zakir Husain Post Graduate Evening College had written a letter to the father of deponent, *inter alia*, stating that the last salary of Km.Chhaya Mitra, for the month of February, 1999, was transferred to her Saving Bank Account with Canara Bank on 28.02.1999. The said letter has been marked as **Ex. PW1/14**.

10. PW-1 has further deposed that Sh.Ram Prasad Mittra, father of

Km.Chhaya Mitra, expired on 11.05.1985 and Smt.Chandi Bala Mitra, mother of Km.Chhaya Mitra expired on 03.12.1996. The death certificates have been marked as **Ex.PW1/26** and **Ex.PW1/27** respectively. He has also deposed that the assets of Km.Chhaya Mitra have been described in Schedule I of this petition and the same has been marked as **Ex.PW1/28**, collectively. The petitioners are entitled to the grant of Letters of Administration in respect of the estate and assets of Km. Chhaya Mitra as they are the only nearest surviving legal heirs of Km. Chhaya Mitra.

11. In the affidavit, PW-1 has next deposed that the approximate market value of the estate of Km.Chhaya Mitra comes to be Rs.36,63,406.93 (Rupees thirty six lakhs sixty three thousand four hundred six and paise ninety three only). It has also been deposed that Km. Chhaya Mitra was also having one bedroom flat, ad-measuring 379 Sq. ft., bearing No. 7A, Block No.1 at Senior Citizen Home Complex Welfare Society, at 8, Old Mussoorie Road, Dehradun, Uttarakhand, and the valuation of the same has been received from the Additional District Judge(ADM), Dehradun, Uttarakhand. The said valuation report has been marked as **Ex. PW1/29**.
12. I have heard learned counsel for the petitioners and also gone through the evidence by way of affidavit of PW-1 filed by the petitioners. Despite citation having been published in the Statesman, Delhi Edition, none has chosen to oppose the present petition. The petitioners have also placed on record, copies of various advertisements, which have been duly exhibited, to show steps being taken to search Km.Chhaya Mitra. The petitioners have also placed on record police reports, which have also been exhibited. Having regard to the depositions made in the evidence by way of affidavit and taking into consideration the statement made by defendants no.2 and 3 that they have no objection if the letters of administration are granted in favour of petitioner no.1, letters of administration shall be granted in

favour of petitioner no.1 with respect to the estate of Km.Chhaya Mitra,
as mentioned in Schedule I, which has been filed along with the present
petition, subject to the petitioner filing court fee and administrative bond.

13. Petition stands disposed of.

G.S.SISTANI, J

MARCH 26, 2014

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