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IN THE HIGH COURT OF DELHI AT NEW DELHI

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TEST. CAS. No. 23/2010

15th October, 2015

SHRI VIJAY DUA

..... Petitioner

Through: Mr. Amit Saxena, Mr. Anil Saxena
and Mr. Vaibhav Sharma, Advocates.

Versus

STATE & ORS.

..... Respondents

Through: Mr. Pradeep Gaur, Advocate for R-2
and 2.

**CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA**

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This probate petition has been filed by Sh. Vijay Dua son of late Sh. Narsingh Dass Dua seeking probate of the Will dated 29.11.2004 executed by the father Sh. Narsingh Dass Dua. At the outset, I may note that the petition though is titled as a petition seeking probate, really the petition will be for letters of administration with the Will annexed, inasmuch as, in the Will of Sh. Narsingh Dass Dua dated 29.11.2004 there is no executor appointed and probate can only be granted to the executor in terms of

Section 222 of the Indian Succession Act, 1925. This petition is therefore treated as a petition for letters of administration with the Will annexed.

2. Respondents no.2 and 3 in this petition are the other son and the daughter of late Sh. Narsingh Dass Dua. These respondents had filed their written statements originally conceding to the probate petition. However, these two respondents thereafter sought to back out, and wanting to amend their written statements to dispute the Will, but such endeavour was disallowed by dismissing an application for amendment of these respondents, by the Order of a learned Single of this Court dated 25.5.2012. Appeal filed by the respondents no.2 and 3 to the Order dated 25.5.2012 of a learned Single Judge was dismissed by a Division Bench of this Court on 3.9.2012 in FAO(OS) No. 425/2012 and the SLP filed in the Supreme Court was also dismissed.

3. Petitioner has appeared in the witness box as PW1 and evidence has also been led by the petitioner of one attesting witness to the Will namely Sh. Vikram Bali as PW2.

4. A reading of the affidavit by way of evidence filed on behalf of the attesting witness Sh. Vikram Bali PW2 shows that the deceased Sh.

Narsingh Dass Dua had got the Will prepared in his presence and had signed

the same after reading the same. Late Sh. Narsingh Dass Dua is stated to have signed the Will in the presence of both the attesting witnesses and both the attesting witnesses also signed in the presence of late Sh. Narsingh Dass Dua. The Will was registered before the Sub-Registrar on the same date when the attesting witnesses were present. The following portion of the affidavit by way of evidence of the attesting witness Sh. Vikram Bali shows that the Will has been proved and these paras read as under:-

- “3. I also state that on 28th November, 2004, the deceased visited my house and requested me to accompany him to the office of Sub Registrar-IV, Seelampur, Delhi the next day, and on my query, he informed that he wanted to execute a Will in respect of all his assets/properties both movable and immovable. I assured the deceased that he would be there in the office of Sub Registrar-IV, Delhi, on 29.11.2004 sharp at 10 A.M. and accordingly on 29.11.2004, the deceased in my presence got prepared the Will and after getting the same typed, read over the same and finding the same strictly as per his desire and instructions, the deceased signed and appended his thumb impression on both the pages of the said Will in my presence as well as in presence of Mr. Ajay Kumar, Advocate.
4. I also state that the deceased had executed and signed the said Will in my presence as well as in presence of Shri Ajay Kumar, Advocate, and thereafter I affixed my hands unto the said document at the place mark A and subsequently Mr. Ajay Kumar also affixed his seal and signature on the said document as attesting witnesses.
5. I also state that the deceased, myself, and the other witness Mr. Ajay Kumar, Advocate signed the said document in presence of each other, present at the same date, place and time. I identify the signatures of the deceased Shri Narsingh Dass Dua on the said document.

6. I also state that the said Will/Document dated 29.11.2004 was presented for registration with the office of Sub Registrar, Delhi and the deceased as well as myself and other witness appeared before the Sub Registrar concerned on 29.11.2004 and the said document was registered as document No.20110 in Addl. Book No.3, Volume No. 2346 on pages 103 to 104 on 29.11.04.”
5. In the cross-examination of this attesting witness nothing has been elicited that the Will was not signed by late Sh. Narsingh Dass Dua or that it was not signed by him in the presence of the witnesses or that the witnesses did not sign in the presence of late Sh. Narsingh Dass Dua. This witness had denied the suggestion that the deceased was not in a sound mental health when he executed the Will.
6. Even in the cross-examination of the petitioner as PW1 nothing has been elicited for setting aside of the Will and PW1 has specifically denied the suggestions that the Will was not executed by late Sh. Narsingh Dass Dua or the same was not signed by him in the presence of the witnesses or that the witnesses did not sign in the presence of Sh. Narsingh Dass Dua.
7. In my opinion, in view of the above, petitioner is successful in proving the Will dated 29.11.2004 of late Sh. Narsingh Dass Dua and which is Ex.PW2/1. Petitioner is therefore granted letters of administration with the Will dated 29.11.2004 annexed of late Sh. Narsingh Dass Dua.

8. Since petitioner is the sole beneficiary under the Will, there will be no requirement of petitioner having to give any administration bond or surety bond. Petitioner will however have to pay the court fees necessary for granting of letters of administration with the Will annexed.

9. This petition is allowed and disposed of accordingly, leaving the parties to bear their own costs.

OCTOBER 15, 2015
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VALMIKI J. MEHTA, J.