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

+ TEST.CAS. 97/2012 and IA No. 3377/2015

YOTEEN CAMERON

..... Petitioner

Through : Mr. Sanjeev Narula and Ms. Meha
Rashmi, Advs.

versus

STATE (NCT OF DELHI) & ORS

..... Respondents

Through : Mr. Uttam Datt, Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

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30.10.2015

1. By this probate petition under Section 276 of the Indian Succession Act, 1925, the petitioner has prayed for grant of probate of Will dated 18th May, 2011 of her mother Late Mrs. Kathleen Maud Marfatia (Testatrix). Respondent nos.2 & 3 are sister and brother of the petitioner.
2. It is categorically averred in the petition that testatrix died at Buffalo, New York on 21st July, 2012. At the time of her death, she was 87 years of age. Testatrix had executed her last Will dated 18th May, 2011 by virtue of which she bequeathed her entire estate comprising of both moveable and immovable properties to petitioner and respondent no.2. Will was executed by the testatrix in the presence of two attesting witnesses. Testatrix has left

behind only an immovable property bearing no. S-185, Panchsheel Park, New Delhi.

3. Respondent nos. 2 and 3 have been duly served and have filed 'no objections' to the grant of probate in favour of petitioner. Their affidavits in this regard are on record. Citation was also published in the newspaper "The Times of India" dated 6th May, 2013 but no public person has come forward to oppose the grant of probate to the petitioner.

4. Petitioner has led evidence by way of affidavits. She has filed her own affidavit in evidence. She has been examined as PW1 and has tendered her affidavit. She has also filed affidavits of two attesting witnesses, namely, Mr. Patrick E. Martin and Ms. Mary Kennedy Martin. Statements of PW1 as well as that of attesting witnesses have remained unchallenged. Petitioner has corroborated the averments made in the petition. She has deposed that she is a named executor in the Will dated 18th May, 2011 of Ms. Kathleen Maud Marfatia. Testatrix was a female Christian and died in a Hospital at Buffalo on 21st July, 2012. Certified copy of Death Certificate of the testatrix has been proved as Ex. P-1. Petitioner has further deposed that she and respondent nos. 2 and 3 were the only legal heirs of testatrix. Petitioner has categorically deposed that testatrix had executed a Will dated

18th May, 2011 thereby bequeathing her estate in the manner as detailed in the Will. She has further deposed that she is familiar with the handwriting of the testatrix as she had often seen her signing and writing, during her lifetime. She has identified the signatures of testatrix on the Will at point 'A'.

5. Ms. Mary Kennedy Martin has deposed that she is one of the attesting witness to the Will of testatrix. She has further deposed that testatrix had executed the Will in her presence and in presence of Mr. Patrick E. Martin, who had also attested the Will. Mr. Patrick E. Martin has also deposed that he is one of the attesting witness to the Will. Testatrix was known to him being neighbour and a friend. On 16th May, 2011 testatrix informed him that she had prepared a Will and wanted him to be an attesting witness to the Will. On 18th May, 2011 he visited the residence of testatrix. Further testatrix signed the last page of the Will and put her initials on the other pages of the Will in his presence and in the presence of Ms. Mary Kennedy Martin. He as well as Ms. Mary Kennedy Martin signed the Will as attesting witnesses. He has identified the Will dated 18th May, 2011 Ex. P-2.

6. From the evidence adduced by the petitioner, more particularly, witnesses to the Will, in my view, petitioner has succeeded in proving that

testatrix had executed her last Will dated 18th May, 2011, while she was in full disposing mind. Requirement of law is met as the Will has been executed by the testatrix in presence of the two attesting witnesses; both the witnesses have categorically stated that testatrix executed and signed the Will Ex. P-2 in their presence, inasmuch as have identified the signatures of testatrix as also their own signatures.

7. Valuation report has been submitted by the Sub Divisional Magistrate, Hauz Khas, which is on record. As per this report, value of the property is ₹9,29,48,599/- (Rupees Nine Crores Twenty Nine Lacs Forty Eight Thousand Five Hundred Ninety Nine Only).

8. In view of the statements of the PW1 and the attesting witnesses as well as the documents placed on record, I am of the view that petitioner has succeeded in proving that testatrix had executed the Will dated 18th May, 2011 Ex. P-2 in accordance with law, which is her last Will and testament. That apart, none of the respondents have challenged the Will, inasmuch as, they have given their “no objections” to the grant of probate to petitioner. Above all, petitioner has proved the Will in accordance with law. Accordingly, I do not find any impediment in granting the probate to petitioner in respect of the Will of testatrix.

9. For the aforesaid reasons, probate of the Will dated 18th May, 2011 executed by testatrix, namely, Ms. Kathleen Maud Marfatia is granted to the petitioner, subject to her paying requisite court fee and furnishing administrative bond with one surety, to the satisfaction of Registrar General of this Court.

10. Petition is disposed of in the above terms. Miscellaneous application is disposed of as infructuous.

A.K. PATHAK, J

OCTOBER 30, 2015

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