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

+ TEST.CAS. 5/2001

SURINDER SABARWAL Petitioner
Through: Mr. Sunklan Porwal, Adv.

Versus

THE STATE & ORS Respondents
Through: Mr. Sachin Nahar, Adv. for GNCTD.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **29.09.2016**

1. This petition under Section 276 of the Indian Succession Act, 1925 was filed seeking probate of the document dated 15th October, 1998 stated to be the validly executed last Will of Smt. Rajinder Kaur Mendiratta widow of Sh. Gurdit Singh Mendiratta who was stated to be the ordinary resident of G-3/12, Malviya Nagar, New Delhi and to have died at the said residence on 12th November, 2000.

2. The petitioner is the daughter of the deceased and has disclosed the deceased to have, besides the petitioner, left three other daughters namely Ms. Mohini Ahuja wife of late Sh. Patwani Singh Ahuja, Ms. Leena Choudhary wife of Sh. Narinder Singh Choudhary and Mrs. Gurmit Kumar Rangar wife of late Sh. Pritipal Singh Rangar and two sons namely Sh.

Surjeet Singh Mendiratta and Mr. Shami Singh Mendiratta as her only natural heirs.

3. Notice to the aforesaid close relatives / natural heirs of the deceased and citation in the newspaper was issued. Advocates for Mr. Surjeet Singh Mendiratta, Ms. Leena Choudhary and Mrs. Gurmeet Kumar Rangar only appeared and none appeared for the other close relatives of which Sh. Shami Singh Mendiratta was served by publication. Sh. Surjeet Singh Mendiratta and Ms. Leena Choudhary also filed replies / objections to the petition and to which rejoinders were filed by the petitioner. Sh. Surjeet Singh Mendiratta was however also proceeded against *ex-parte* on 18th November, 2005. On the objections of Ms. Leena Choudhary, on 22nd February, 2006, the following issues were framed:

- “1. Whether deceased Mrs. Rajinder Kaur executed a legal and valid Will dated 15th October, 1998? *OPP*
2. *Relief.*”

4. Ms. Leena Choudhary made an application for impleading the legal representative of Smt. Pritam Kaur pre-deceased daughter of the deceased Smt. Rajinder Kaur Mendiratta and which was not opposed by the petitioner and allowed on 1st May, 2007 and notice to them was issued. Reply was filed by Sh. Gurvinder Pal Singh Sachdeva, one of the legal representatives

of Smt. Pritam Kaur and to which rejoinder was filed by the petitioner. Another legal representative of Smt. Pritam Kaur placed power of attorney in favour of Ms. Leena Choudhary on record. The other legal representatives of Smt. Pritam Kaur and other close relatives of the deceased, save Ms. Leena Choudhary were on 27th July, 2009 proceeded against *ex-parte*. The aforesaid Sh. Gurvinder Pal Singh Sachdeva also died. An application for substitution of his legal representatives was filed and notice issued to them but they did not appear, despite service.

5. The only contesting respondent Ms. Leena Choudhary also died and application for substitution of her legal representatives was filed but they also failed to appear despite service.

6. The petitioner has examined herself and Mr. Swarn Singh, Advocate one of the attesting witness of the document of which probate, as the Will of the deceased Smt. Rajinder Kaur Mendiratta, is sought.

7. I have perused the evidence of the petitioner and of one of the attesting witnesses to the Will and find the said document on which Ex.PW-1/1 is put to have been proved as the validly executed Will of deceased Smt. Rajinder Kaur Mendiratta. In fact, the affidavit by way of examination-in-chief of the other witness to the Will is also found on record but who was not examined,

perhaps for the reason of none of the close relatives of the deceased interested in opposing the grant of probate having contested this petition.

8. The petition is accordingly allowed; probate is ordered / directed to be granted of the Will Ex.PW-1/1 of the deceased Smt. Rajinder Kaur Mendiratta widow of Sh. Gurdit Singh Mendiratta resident of G-3/12, Malviya Nagar, New Delhi. Probate be issued on the petitioner depositing the requisite stamp duty and complying with the other formalities.

9. The petition is disposed of.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 29, 2016

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