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IN THE HIGH COURT OF DELHI AT NEW DELHI

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TEST.CAS. 26/2013

SARITA GIRI AND ANR

..... Petitioners

Through: Mr. K. Sunil, Advocate.

versus

STATE

..... Respondent

Through: Mr. Rajat Malhotra, Advocate.

CORAM: JUSTICE S.MURALIDHAR

ORDER

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29.08.2016

1. This is a petition under Section 276 of the Indian Succession Act, 1925 ('Act') for grant of probate of the Will dated 6th April 2009 of late Shri Hanuman Giri ('Testator'). The Petitioner No. 1 is the daughter-in-law of the Testator whereas the Petitioner No. 2 is stated to be the family friend of the Testator. It is stated that Petitioner No. 2 had also helped the Testator in safeguarding his property and also helping the Testator and his family members monetarily.

2. It is stated that the Testator was a Hindu and was governed by the Hindu Succession Act, 1956. The Testator is stated to be the owner of the property bearing no. D-43, Kamla Nagar, Delhi admeasuring 114 sq. yds. comprising of mezzanine floor, entire 1st floor, entire 2nd floor and roof over and above the 2nd floor of the said property, as mentioned in Schedule I of the Petition. The Schedule I filed along with the Petition has been exhibited as **EX PW-1/1**.

3. At the time of his death on 23rd September 2010, the Testator was

stated to be residing at House no. 138/3, Sant Nagar 100 foot main Road, Sant Nagar, Burari, Delhi - 110084 which fact has also been recorded on the death certificate issued by the Municipal Corporation of Delhi. The original death certificate of the Testator has been exhibited as **EX PW-1/2**.

4. The Testator executed a Will on 6th April 2009 at Delhi in the presence of two witnesses, Mr. Vivek and Mr. Parvinder Kumar and duly attested by the Notary Public at Delhi on the same date. The witnesses are stated to have signed it in the presence of each other. The original Will dated 6th April 2009 is exhibited as **EX PW - 1/3**.

5. It has been stated in the Will that the Testator is the absolute and exclusive owner and that the Petitioner No. 1 is the wife of his deceased son Mr. Rajesh Giri who had pre-deceased the Testator. It is also stated in the Will that the Petitioner No. 2 is a family friend and has been spending money for the welfare of his family and has also agreed to spend money on the marriage and other functions of the grand children of the Testator. It is also stated that the Petitioner No. 2 has helped in renovating of the property in question as well.

6. The Will states that the Testator is of sound health and disposing mind and for the reasons recorded therein, wishes to bequeath the aforesaid property No. D-43, Kamla Nagar, Delhi comprising of mezzanine floor, entire 1st floor, entire 2nd floor and roof over and above the 2nd floor of the said property to Petitioner Nos.1 and 2 jointly and in equal share. It was also stated that the Petitioners shall have equal and absolute right in respect of the property in question. The Testator has also stated in the said Will that except for the two Petitioners, who shall remain the joint owners in equal share, none of his legal heirs shall have any right in respect of the

said property. It has also been stated in the Will that in case any of the legal heirs make a claim in respect of the said property, the same shall ab initio void. It has also been stated in the said Will that one of his near relative has played fraud upon him and for which a suit is pending before this Court.

7. Therefore it is stated that the Petitioners are the beneficiaries jointly in equal share in respect of the property bearing no. D-43, Kamla Nagar, Delhi – 7 admeasuring 114 sq. yds. comprising of mezzanine floor, entire 1st floor, entire 2nd floor and roof over and above the 2nd floor of the said property and further the said property has been bequeathed in the names of the Petitioners to the exclusion of any other legal heirs.

8. The Testator is said to have left behind the following legal heirs:

- i) Smt. Sarita Giri W/o Late Sh. Rajesh Giri (daughter-in-law)
- ii) Ms. Latika Giri granddaughter of Late Sh. Rajesh Giri
- iii) Master Uday Giri grandson of Late Sh. Rajesh Giri
- iv) Smt. Sunita Giri d/o Late Sh. Hanuman Giri W/o Sh. Brijesh Giri
- v) Smt. Savita Giri W/o Dinesh Giri
- vi) Smt. Nirmala Devi w/o Mehant Giri
- vii) Smt. Shakuntala Devi w/o Brahm Dutt

9. Schedule II containing list of legal heirs has been exhibited as **EX PW-1/4**.

10. Despite service of notice, none of the legal heirs have appeared and raised any objection. The Joint Registrar ('JR'), by an order dated 30th

September 2014, noted that Respondents 2 and 3 were served on 7th May 2013 and Respondent No. 4 on 23rd September 2013. It is further noted that Respondent No. 1 is the Petitioner No. 1 herself. In the order dated 17th October 2014, the JR noted that the Respondent No. 5 had already been served on 28th May 2013. As regards Respondent Nos. 6 and 7, the publication of the citation has been placed on record. *Dasti* service has been effected and affidavit of service has been filed. However, today none appears on behalf of Respondent Nos. 6 and 7. The Respondents being the legal representatives of the Testator are accordingly set *ex parte*.

11. Both Petitioners have filed their respective affidavits by way of evidence reiterating the averments in the petition. Mr. Parvinder Kumar, one of the two attesting witnesses, filed an affidavit of evidence in which he has confirmed that the Will was executed by the Testator in the presence of the two witnesses and in the presence of each other. He has also confirmed that at the time of execution of the Will the Testator was in a sound disposing state of mind.

12. The evidence on behalf of the Petitioners remains uncontroverted. None of the legal heirs of the Testator has raised any objection to the grant of letters of administration in respect of the Will, in which no Executor has been named. The State too has not raised any objection. The Sub-Divisional Magistrate (Civil Lines) has already filed the valuation report, which has been taken on record.

13. The genuineness of the Will having been proved in accordance with law, there is no impediment to the grant of Letters of Administration in respect thereof in favour of the Petitioners under Section 278 of the Act.

14. The petition is allowed. Letters of Administration with the Will dated 6th April 2009 of late Shri Hanuman Giri annexed is granted to the Petitioners subject to their paying the requisite court fees, and furnishing an administration bond with one surety to the satisfaction of the Registrar General of this Court.

S.MURALIDHAR, J

AUGUST 29, 2016

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