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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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\+ **TEST.CAS. 47/2013**

SUNDER SINGH ..... Petitioner
Through: Ms. Sapna Chauhan, Advocate.

versus

STATE AND ORS. ..... Respondents

CORAM: JUSTICE S. MURALIDHAR

O R D E R
% 16.09.2016

1. This is a petition under Section 276 of the Indian Succession Act, 1925 ('Act') for grant of probate of the Will dated 16th October 1975 of late Smt. Narinder Kaur (‘Testator'). The Petitioner is the nephew of the Testator.

2. It is stated that the Will dated 16th October 1975 was executed by the Testator with regard to all her present and future properties. It is stated that one such property bearing Flat No. BC-7H, Third Floor, DDA Flats, Munirka, New Delhi (‘said Property’) was purchased by the Testator in the year 1977-78. The Testator is stated to be the only and absolute owner of the said Property and also of her other moveable and immoveable assets which were purchased during her lifetime. It is further stated that they were purchased by the Testator in favour of the Petitioner.

3. The Will dated 16th October 1975 is stated to have been registered and duly signed by Smt. Kamaljeet Kaur and Smt. Saria Bhargava as attesting witnesses. A copy of the said Will has been annexed alongwith the

Petition as **Annexure-A**.

4. At the time of her death on 23rd April 2010, the Testator was stated to be residing at the said property i.e., Flat No. BC-7H, Third Floor, DDA Flats, Munirka, New Delhi. The original death certificate of the Testator has been enclosed with the petition as Annexure-B.

5. It has been stated that the Petitioner has not applied for Estate Duty Clearance certificate from Controller of Estate Duty, Delhi as the same is not applicable in the case of the deceased. The said property is the sole property listed in the schedule of assets filed along with the petition and under the schedule of liabilities it is listed as "none". The site plan for the said Property i.e., Flat No. BC-7H, Third Floor, DDA Flats, Munirka, New Delhi has been enclosed with the petition as Annexure-C.

6. It has been stated in the Will dated 16th October 1975 that it is the last Will of the Testator and that all the Wills and codicils made by the Testator at any time thereinbefore is revoked. The Will further absolutely bequeaths all movable and immovable properties, assets, choses-in-action belonging or may thereafter belong to the Testator and which remained to be disposed of during the Testator's lifetime to the Petitioner, Shri Sunder Singh, who is the son of the Testator's brother Shri Pardaman Singh. It has been stated in the Will that the Petitioner was 10 years at the time and was residing with the Testator at B-1/10,Safdarjang Enclave, New Delhi. It has been further stated in the Will that the aforesaid properties are the Testator's self acquired properties and that nobody has any claim, right, charge or lien over it.

7. It has been stated in the Will that in case of death of the Testator before the Petitioner attaining majority, the Testator's brother Shri Pardaman

Singh be appointed Executor under the Will, who shall collect and realise all outstanding and choses-in-action, and administer the estate left by the Testator for the benefit of the Petitioner after defraying all expenses of such administration till the Petitioner attains majority, whereupon the Executor shall handover the estate to the Petitioner. It is stated that during the minority of the Petitioner, the Executor shall be the guardian of the Petitioner.

8. It has been stated in the Will that the provision relating to the appointment of an Executor shall not take effect if the Petitioner attains majority during the lifetime of the Testator. In such a case, the Petitioner shall receive and appropriate as owner the estate left by the Testator.

9. It has been stated in the Will that it has been signed by the Testator in the presence of the two attesting witnesses, Smt. Kamaljeet Kaur D/o Sardar Harchand Sing Jajee and Smt. Sarla Bhargava wife of late Shri K,C, Bhargava, and in the presence of each other. The Will also states that it has been drafted by the Testator.

10. The Court by its order dated 8th July 2013 issued notice to the respondents and directed publication in the newspapers 'Hindustan Times' (English) and 'Hindustan' (Hindi). Thereafter the Joint Registrar ('JR'), by an order dated 27th November 2014 noted as follows:

> "Respondent No. l has filed the valuation report.
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> Respondent No.2 has also been served on 14.08.2013. No objections have been filed by respondent no.2 till date.
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> Respondent No.4 is ex-parte.
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> Respondent Nos. 3(i) and 3(ii) have not filed their objections till date.

> Respondent Nos. 5 and 6 are unserved. Fresh notice be issued to respondent no.5 and 6 on filing of PF, RC and approved courier, returnable for 3rd March, 2015."

11. On the next date, the JR noted that the Respondent No. 5 was served with the notice of the petition on 18th February 2015 and that Respondent No. 6(i) and 6(ii) were unserved with the report that the address is incomplete. Thereafter the JR, by the order dated 18th May 2015 in IA No. 10440/2015, allowed the application for substituted service with respect to Respondent Nos. 6 (i) and 6(ii) by way of publication in 'The Statesman' and 'Nai Duniya'. On 14th July 2016, the JR passed the following order:

> "Respondent nos. 6(i) and 6(ii) have been served by way of publication in 'The Statesman' dated 11.04.2016 and 'Nai Dunia' dated 11.04.2016. I deem it to be appropriate service on the respondent nos. 6(i) and 6(ii).
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> Service of respondents stands completed.
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> Matter be placed before the Hon'ble Court for further directions on 19th August, 2016."

12. None has appeared for Respondents 6 (i) and 6 (ii) as well. Resultantly, none of the legal heirs of the Testator has raised any objection to the grant of letters of administration in respect of the Will. The averments in the petition remains uncontroverted. Since the Petitioner has attained majority, the appointment of Executor clause in the Will does not apply. The State too has not raised any objection. The Sub-Divisional Magistrate (Vasant Vihar) 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 Petitioner under Section 278 of the Act.

14. The petition is allowed. Letters of Administration with the Will dated 16th October 1975 of late Smt. Narinder Kaur annexed is granted to the Petitioner subject to his furnishing an administration bond with one surety to the satisfaction of the Registrar General of this Court.

S. MURALIDHAR, J

SEPTEMBER 16, 2016
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