

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

% **Decided on: 05.12.2016**

+ **TEST.CAS. 77/2015**

AABHAS

..... Petitioner

Through: Mr.Sunil Mund and Mr. Manoj
Kumar, Advocates alongwith
petitioner in person.

Versus

STATE (NCT OF DELHI)

..... Respondent

Through: Mr.Vinod Kr.Goyal, Mr.Abhinav
Singh and Mr.Prashant Tomar,
Advocates

CORAM:
HON'BLE MS. JUSTICE DEEPA SHARMA

JUDGMENT

1. The petitioner has filed the present petition under Section 276 of the Indian Succession Act, 1925 for grant of Probate of Will dated 02.11.2009 of late Shri Rameshwar Dayal Sharma, S/o Pandit Ram Singh in respect of property bearing No.86, Unique Apartments, Plot No.2, Section 13, Rohini. It is submitted that Shri Rameshwar Dayal Sharma was a permanent resident of this property and his wife pre-deceased him on 18.01.1983. Shri Rameshwar Dayal Sharma during his life time executed a Will dated 02.11.2009 of his own free will and without any coercion and undue

influence and that he was in his sound and disposing mind and health at the time of execution of the said Will. The said Will was duly attested by the witnesses. It is submitted that the petitioner is the sole surviving executor of the said Will. The surviving member certificate issued by the Executive Magistrate, Alipur, Delhi is also attached along with the plaint. The copy of ration card is also tagged along with the plaint, including the true copy of the election identity card of the petitioner showing details. The list of assets and properties of late Shri Rameshwar Dayal Sharma as per Will are also enclosed. It is also submitted that the entire property has been bequeathed by his late father to him and that he is not survived by any legal heirs of Class-I, except that of petitioner.

2. The notice was issued to the State and accordingly the citation was also published on 16.10.2015 in the newspapers "The Statesman and Navbharat Times". No public person filed any objection against the grant of Probate pursuant to publication of the citation in the above two newspapers. The petitioner has led his evidences and has examined two witnesses. PW-2 Ashok Khanna is the attesting witness of the Will (Ex.PW-1/2). He has identified his signatures on the Will (Ex.PW-1/2) at Point 'A' and that of Dr. Rameshwar Dayal Sharma at Points 'B1' and 'B2' on each page of the Will

(Ex.PW-1/2) and of other attesting witness Mr Virender Kaushik at Point 'C' on the Will (Ex.PW-1/2). He has also deposed that Dr. Rameshwar Dayal Sharma has signed the Will (Ex.PW-1/2) in his presence and in the presence of Mr.Virender Kaushik who had also signed the Will (Ex.PW-1/2) at point 'C' in his presence. He has also deposed that he had also signed the Will (Ex.PW-1/2) in the presence of Dr. Rameshwar Dayal Sharma as well as Mr Virender Kaushik.

3. The petitioner has also produced on record the original Will and submitted that he is the sole executor of the said Will and has proved on record the surviving member certificate issued by the Executive Magistrate, Alipur. He has also deposed that his father Dr. Rameshwar Dayal Sharma had died on 13.02.2014 and that his mother pre-deceased. He has also proved on record the copy of the ration card showing the name of the petitioner in the family member column. He has reiterated all the averments made in the petition.

4. Both the witnesses have corroborated the versions to the effect that Will was executed by Dr. Rameshwar Dayal Sharma. From the testimony of Ashok Khanna, PW-2, it stands proved that the Will was executed by Dr. Rameshwar Dayal Sharma and he signed each and every page of the said

Will in the presence of the attesting witnesses Ashok Khanna, PW-2 and Virender Kaushik. Ashok Khanna, PW-2 has also proved that he and Virender Kaushik also signed the said Will as the attesting witnesses in the presence of each other and in the presence of Testator, i.e., Dr. Rameshwar Dayal Sharma.

5. I have heard the arguments of learned counsel for the petitioner.

6. From the above evidences and the other materials on record, I am satisfied that the Will has been proved as per law. It was executed by deceased Dr. Rameshwar Dayal Sharma in the presence of attesting witnesses Ashok Khanna and Virender Kaushik. Despite the publication of the citation in the two newspapers, no legal heirs of the deceased have come forward to challenge the Will. I find no impediment in granting the Probate to the petitioner in respect of the Will of the Testator. The Valuation Report has been submitted by the Assistant Collector, Alipur and the property is valued at Rs.31,63,463/-

7. In the light of the above discussion, Probate of the Will dated 02.11.2009 is granted to the petitioner in respect of the property bearing No.86, Unique Apartment, Plot No.2, Section 13, Rohini, subject to his paying requisite Court Fee and furnishing administrative bond with one

surety to the satisfaction of the Registrar General of this Court within three months from this order.

8. The petition stands disposed of.

**DEEPA SHARMA
(JUDGE)**

**DECEMBER 05, 2016
BG**

