$~11

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

\+ TEST.CAS. 5/1997 & IA No.8242/2002 (u/O I R-10 CPC)

LOKENDRA SINGH ..... Petitioner

Through: Mr. Sarvam Ritam Khare& Mr. Ratish Kumar, Advs.

Versus

STATE & ORS. ..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

O R D E R

% **03.05.2017**

1. This petition under Section 276 of the Indian Succession Act seeks probate of the document dated 24th May, 1995 stated to be the validly executed last Will of Pushpa Kumari Devi, wife of Late Maharaja Nagendra Singh, Ex-President of the International Court of Justice at Hague, Holland, who as per the Death Certificate filed along with the petition died on 11th August, 1996 at B-8/26, Vasant Vihar, New Delhi.

2. The petition was entertained and citation ordered to be issued by publication in the newspaper "Indian Express", Bhopal or Indore edition.

3. In the petition, besides the petitioner stated to be the son of the brother of the deceased, Sulkashna Kumari and Kamaksha Kumari stated to be the grandnieces only were disclosed as the natural heirs of the deceased.

4. Both Sulkashna Kumari and Kamaksha Kumari filed their no objections to the grant of probate.

5. In response to the citation issued, time was sought to file objections on behalf of one Aditya Kumar Jajoria. However no objections were filed and the counsel who had earlier appeared for Aditya Kumar Jajoria also stopped appearing.

6. The petitioner, in his *ex-parte* evidence, besides examining himself as PW-2, examined A.P. Aggarwal, son of Late S.L. Aggarwal, resident of C-20, Green Park Extension, New Delhi, one of the attesting witnesses to the document claimed to be the validly executed last Will, as PW-1.

7. However, before arguments could be heard in the petition, one of the close relatives Sulkashna Kumari died and an application for substitution of her legal representatives was filed and which was allowed on 23rd February, 2001. The legal representatives of Sulkashna Kumari also submitted their no objections to the grant of probate.

8. IA No.6519/2001 was filed by one Shree Jagat Dhatri Mata Trust (Trust) for impleadment in this proceeding and which was allowed vide order dated 12th November, 2007. A perusal of the order sheet at this stage discloses that the undersigned had appeared as Advocate on behalf of the Trust. However, it is not deemed appropriate to recuse from the matter which is already 20 years old, at this stage. The counsel for the petitioner also states that he has no objection.

9. Thereafter the said Trust filed objections to the petition and the matter continued to languish for completion of pleadings on the said objections.

10. Thereafter separate applications for impleadment were also filed by Manoj Kumar, A.V. Singh and Archana Gohil.

11. The application for impleadment of Manoj Kumar was dismissed as withdrawn on 3rd January, 2014.

12. A.V. Singh, on 14th July, 2014 withdrew his application for impleadment.

13. Vide order dated 14th July, 2014, the application of Archana Gohil for impleadment was allowed.

14. Thereafter the matter continued to languish for completion of pleadings qua the objections of Archana Gohil.

15. IA No.19642/2014 was filed by Aditya Kumar Jajoria under Order XXII Rule 10 of the CPC. The counsel for the petitioner informs that Aditya Kumar Jajoria sought substitution in place of Shree Jagat Dhatri Mata Trust on the ground of the Trust having assigned its rights in property No.E-24, Anand Niketan, New Delhi subject matter of the document claimed to be the Will in his favour.

16. The order dated 15th January, 2015 records that Archana Gohil was supporting the Will of which probate is sought in this petition.

17. Vide order dated 8th December, 2015, the application of Aditya Kumar Jajoria for substitution as successor of the Trust was dismissed. The counsel for the petitioner on enquiry states that challenge made to the said order by way of Chamber Appeal was dismissed as withdrawn on 9th May, 2016 and the matter posted for final hearing.

18. Thus, notwithstanding the proceedings having remained pending for twenty years, they are uncontested and no issues even on the objections filed at one stage have been framed.

19. This Court as a testamentary Court is concerned only with the proof in accordance with Sections 270 & 281 of the Indian Succession Act, 1925, of the document claimed to be the validly executed last Will of the deceased.

20. I have perused the examination-in-chief of A.P. Aggarwal recorded on 23rd April, 1998. He deposed i) that he was practising as an Income Tax Practitioner; ii) that the deceased was his client and he used to do the tax matters of the deceased; iii) that the deceased had executed the Will dated 24th May, 1995; iv) that he was entrusted with the custody thereof; v) that the said document/Will was signed by the deceased in his presence at points 'A', 'B' and 'C' at pages 1,2 and 3 respectively of the document; vi) that he had seen the deceased writing and singing and was as such in a position to identify her signatures; vii) that he had also signed the Will as an attesting witness at point 'D'; viii) that Swami Vidyanand, the other attesting witness had also signed the said document at point 'E' in his presence and he could as such identify his signature; ix) that the deceased signed in presence of himself and Swami Vidyanand and he and Swami Vidyanand had signed in the presence of the deceased; and, x) that the deceased was in a sound disposing mind and health at the time of execution of the document.

21. On the basis of the evidence of A.P. Aggarwal, one of the attesting witness of the Will, I am satisfied that the document dated 24th May, 1995 has been proved in accordance with Sections 270 & 281 of the Indian Succession Act as the validly executed last Will of the deceased Pushpa Kumari Devi.

22. Probate is ordered to be issued of the document dated 24^{th} May, 1995 proved in this proceeding as Ex.PW1/1 as the validly executed last Will of Pushpa Kumari Devi, wife of Late Maharaja Nagendra Singh, resident of B-8/26, Vasant Vihar, New Delhi.

23. The petition is disposed of.

24. Probate be issued to the petitioner on the petitioner depositing the requisite stamp paper and filing the administration bond with two securities of the value of the property as reported in the valuation report and on the petitioner taking the requisite steps in this regard, the matter be listed before the Registrar (Judicial) for the requisite scrutiny.

RAJIV SAHAI ENDLAW, J.

MAY 03, 2017
'gsr' ..