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

+ **TEST.CAS. 27/2012**

SHIVNEET POHOJA & ANR

..... Petitioners

Through: Mr Rishi Manchanda, Advocate.

versus

THE STATE (NCT OF DELHI)

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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09.02.2017

VIBHU BAKHRU, J

1. The petitioners have filed the present petition under Section 276 of the Indian Succession Act, 1925 (hereafter “the Act”) for grant of probate of the Will dated 02.05.2011 (hereafter “the Will”) which is stated to be the last Will and Testament of Smt. Anita Pohoja (hereafter referred to as “the Testator”) who expired on 20.05.2011. It is seen that no executor has been appointed by the Testator in the Will dated 02.05.2011 and therefore, in terms of Section 222 of the Act, probate as sought cannot be granted. Accordingly, the present petition is treated as a petition under Section 278 of the Act for grant of letters of administration.

2. Mr Shivneet Pohoja (hereafter referred to as “PW1”) being the son of the Testator, has filed an affidavit by way of evidence - on his behalf and on behalf of his sister, Ms Shipali Pohoja - affirming the averments made in the petition.

3. It is affirmed that Mr Shivneet Pohoja and Ms Shilpi Pohoja (petitioner no. 1 and 2 herein) are legal heirs of the Testator. It is further

stated that Mr Shyam Sunder Pohoja - being father of the petitioners and husband of the Testator - had expired on 09.10.1991. PW1 states that the Testator had executed a Will dated 02.05.2011 whereby the self-acquired properties of the Testator were bequeathed in favour of the petitioners.

4. PW1 states that the Testator had expired on 20.05.2011 leaving behind the petitioners as her only legal heirs. PW1 has placed on record the list of immovable and movable properties of the Testator, which have been exhibited as ExhPW-1/7 and ExhPW-1/8 respectively. PW1 further states that the petitioners are the only beneficiaries of the Will. PW 1 has further stated that the Will was signed by the Testator in the presence of two witnesses namely Mr Girish Mittal and Mr Suresh Kumar (hereafter referred to as “the attesting witnesses”) and further that she was in a sound state of mind at the time of execution of the Will.

5. The attesting witnesses have also been examined on oath, as PW2 and PW3. PW 2 and 3 identified the Will dated 02.05.2011 which has been exhibited as ExhPW-1/6 and further deposed that the Testator, in their presence, signed at point A on pages 1 and 2 and at point A and B at page 3 of the Will. PW 2 has identified the signatures of the Testator as well as of PW3; similarly PW3 has also identified the signatures of the Testator as well as of PW2. The attesting witnesses also stated that the Testator was in a sound state of mind at the time of execution of the Will and had executed the Will out of her own free will, without any force or coercion.

6. By an order dated 25.04.2012, the Chief Revenue Controlling Authority Gurgaon and Greater Noida were directed to send the valuation

reports of the properties as mentioned in the Will dated 02.05.2011. The said valuation reports have been received.

7. I have heard the learned counsel for the petitioners and have examined the affidavit filed by PW1.

8. PW1 has duly proved the death of the Testator by filing the death certificate of Testator as ExhPW-1/3. PW1 has also proved the execution of the Will dated 02.05.2011 as ExhPW-1/6. In view of the above, it is also apparent that there is no other legal heir of the Testator.

9. Although Citation was published in the newspaper “The Statesman” on 28.09.2013, no objection against the present petition has been received. Accordingly, there is no legal impediment in granting the Letters of Administration in favour of the petitioners.

10. The petition is therefore, allowed.

11. Accordingly, it is directed that Letters of Administration with the authenticated copy of the Will be issued in favour of the petitioners on furnishing of the requisite court fee, subject to the satisfaction of the Registrar General of this Court. Since the petitioners are the only beneficiaries, the requirement of furnishing administrative bond and undertaking of a surety are dispensed with.

12. The petition is disposed of.

VIBHU BAKHRU, J

FEBRUARY 09, 2017
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