

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

% **Decided on: 19th September, 2017**

+ **TEST. CASE 41/2016**

SWATI CHHATRE

..... Petitioner

Represented by: Mr. Kishore Gajariya with
Mr. Shivum Asthana, Advocates

versus

STATE

..... Respondents

Represented by: Mr. Arun Malik with
Ms. Ruchira Singh, Advocates for
R-2 & 3

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. By the present petition filed under Section 276 of Indian Succession Act, 1925, the petitioner seek grant of probate/Letter of Administration in respect of the last Will of Late Mrs. Shanti Pandey executed on 1st June, 2010 in favour of the petitioner.

2. Since no executor has been appointed in the Will dated 1st June, 2010 by the testator, probate cannot be granted by virtue of Section 222 of Indian Succession Act. However, section 232 of the Act provides that where the deceased has made a Will but has not appointed an executor, a universal or a residuary legatee may be admitted to prove the Will, and letters of administration with the Will annexed may be granted to him/her of the whole estate. Since the petitioner is a beneficiary under the Will, the present petition is treated to be one under Section 278 of the Act.

3. Briefly stated, the deceased, Late Mrs. Shanti Pandey, died on 3rd June, 2013 at Delhi. At the time of death, the deceased had her permanent residence at D-155, Pushpanjali Enclave, Pitampura, Delhi – 110034. The deceased executed her last Will and testament dated 1st June, 2010 which was registered in the office of concerned Sub-Registrar in the presence of two attesting witnesses namely Mrs. Sucheta Deshpande and Mr. Kamraj.

4. Upon her death, the deceased left behind one son and two daughters as her class I heirs namely Mr. Ayushman Bhaskar Pandey (respondent no.2), Mrs. Madhawi Pathak (respondent no.3) and Mrs. Madhulika Pandey Bourne (respondent no.4). Petitioner is the daughter-in-law of the deceased.

5. As per the Will, the deceased bequeathed her part of the estate (described below) in favour of the petitioner. The estate, residential plot of land and residential building constructed thereupon, bears the following description:

“One half undivided share of residential building, comprising of 182.85 sq. metres and residential plot of land measuring 107.55 sq. metres, bearing Municipal Number D-155, Pushpanjali Enclave, Pitampura, Delhi - 110034”

6. The ownership of other half undivided share of the property vested in Late Sh. Ram Tap Pandey, husband of the deceased. Upon the demise of Late Sh. Ram Tap Pandey on 24th September, 2009, his last Will dated 1st May, 2009 was probated in favour of Mr. Ayushman Bhaskar Pandey (respondent no.2) by this Court vide judgment dated 12th December, 2013 in Test. Case No. 50/2012.

7. An affidavit by way of evidence has been tendered by the petitioner Swati Chhatre (PW-1) vide Ex. PW-1/A and death certificate of Late Mrs.

Shanti Pandey as Ex. PW-1/2. Conveyance deed dated 27th February, 1997 whereby the deceased acquired the ownership of the estate property mentioned hereinabove has been exhibited as Ex. PW-1/4.

8. An affidavit by way of evidence has been tendered by Kamraj (PW-2) vide Ex. PW-2/A who stated that he was one of the attesting witness to the Will of the deceased and identified the signature of the deceased on the Will dated 1st June, 2010 exhibited as Ex. PW-2/1.

9. No objection affidavits were filed by respondent no. 2 & 3 and right to file objections qua respondent no. 4 was closed vide order dated 22nd March, 2017.

10. In view of facts and circumstances, there is no impediment in granting the relief of Letter of administration of Will as claimed in the petition, as the petitioner has succeeded in proving that the deceased Late Mrs. Shanti Pandey had executed the Will dated 1st June, 2010 and the said Will was her last Will and testament.

11. Consequently, Letter of Administration with respect to Will (Ex. PW-2/1) dated 1st June, 2010 of late Mrs. Shanti Pandey, is granted in favour of the petitioner in respect of the property left behind by the deceased as mentioned above, subject to the requisite court fees/stamp duty being furnished in accordance with the valuation report to the satisfaction of the Registrar General of this Court.

12. In view of the fact the petitioner is the sole beneficiary of the estate of the deceased, it is deemed appropriate to dispense with the requirement of the petitioner furnishing an administration bond/surety bond.

13. Petition is disposed of.

14. Matter be listed before the Registrar General for payment of requisite court fees on 11th October, 2017.

(MUKTA GUPTA)
JUDGE

SEPTEMBER 19, 2017

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