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

+ TEST.CAS. 79/2016

ASHOK KUMAR SHARMA & ANR Petitioners
Through Mr. Anuj Kumar Pandey, Advocate
for P-1 & P-2.

versus

STATE AND ORS. Respondents
Through Mr. Anuj Kumar Pandey Advocate for
R3, R4 R5 and R6.

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Date of Decision : 20th December, 2017

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

JUDGMENT

MANMOHAN, J: (Oral)

1. Present petition has been filed under Section 276 of the Indian Succession Act for grant of probate of Will dated 06th August, 2010 of deceased Smt. Sita Rani, w/o Late Sh. Raja Ram.
2. In the petition it has been averred that the petitioners are the sons of late Smt. Sita Rani, who expired on 19th March, 2016 in New Delhi. The deceased is stated to have executed a registered Will dated 06th August, 2010, which was duly attested by Mr. Jai Prakash and Mr. Sushil Kumar Sharma. The Will dated 06th August, 2010 executed by the deceased is reproduced hereinbelow:-

“Know all men by these presents that the world is mortal and there is no hope when the life of a man may end, hence with my own consent free will and without any pressure from any corner

whatsoever, I, Smt. Sita Rani wife of Late Shri Raja Ram Sharma, aged about 74 years resident of 55, Gujranwala Town, Part-II, Delhi, on this 6th day of August 2010, after revoking/cancellation all my previous Will and writing if any, including the Will, registered as document No.48903, in Addl. Book No.3, volume No.6048 on pages 73 to 76 dt. 11.11.2003, registered in the office of the Sub-Registrar, S.D. No.II, Janakpuri, New Delhi.

Whereas I am the absolute/ex-clusive owner of the property No.55, Gujranwala Town, Part-II, Delhi, measuring 225 Sq.yd. which is myself acquired property.

And whereas I was also the owner of property No.CW-84, Sanjay Gandhi Transport Nagar, Delhi, measuring 250 Sq. yds.

And Whereas I had sold the property No.CW-84, Sanjay Gandhi Transport Nagar, Delhi and out of total sale consideration amount, my son Davinder Kumar had received his share money from me, and on receiving his share money from all my movable and immovable properties, said Sh. Davinder Kumar has left all his claims, rights, titles or interest, relating to his share, in my movable and immovable properties, presently owned/possessed by me.

And whereas I have the following legal heirs in my interest:

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| i) | <i>Davinder Kumar</i> | <i>son</i> |
| ii) | <i>Ashok Kumar</i> | <i>son</i> |
| iii) | <i>Smt. Madhu w/o Sh. Bharat Bhushan</i> | <i>daughter</i> |
| iv) | <i>Smt. Suman Bala W/o Sh. Satish Kumar</i> | <i>daughter</i> |
| v) | <i>Rajeev Kumar</i> | <i>son</i> |
| vi) | <i>Smt. Kiran Bala</i> | <i>daughter</i> |
| vii) | <i>Smt. Mamta W/o Sh. Manoj Kumar Sharma</i> | <i>daughter</i> |

And whereas all my daughters are married and they were given sufficient dowry and other gifted articles at the time of their marriages and thereafter they are living in their in-laws houses and enjoying happily life, and they are well settled in their life.

And whereas with affection of love with my sons and daughters, I have decided to execute this last will and testament, so that there may be no dispute, regarding my above said property

No.55, Gujranwala Town, Part-II, Delhi, after my death and my soul will rest in peace.

Now thse presents witnesseth as under:

- 1. That I hereby declare that during my life time, I will remain as the absolute/ex-clusive owner in possession/occupation of the property No.55, Gujranwala Town Part-II, Delhi and I will use, hold, enjoy and get other benefit thereof and will be in a position to sell, mortgage, part with or assign the said property for any consideration amount and utilize the sale consideration amount of my own.*
- 2. That I further declare and bequeath that after my death, entire ground floor of the property No.55, Gujranwala Town, Part-II, Delhi, will go and devolve in favour of my son Ashok Kumar and he will be absolute/ex-clusive owner and in possession/occupation of the same and he will use, hold enjoy and get other benefit thereof.*
- 3. That I further declare and bequeath that after my death, entire first floor of the property No.55, Gujranwala Town, Delhi (Part-II), will go and devolve in favour of my son Rajeev Kumar and he will be the absolute/exclusive owner and in possession/occupation thereof.*
- 4. That I further declare and bequeath that roof of the first floor, of the property NO.55, Gujranwala Town, Part-II, Delhi, will go and devolve in favour of my two sons Ashok Kumar and Rajeev Kumar, in their equal shares and they will use, hold, enjoy and get other benefit thereof.*
- 5. That I further declare that my son Davinder Kumar and daughters Smt. Madhu, Smt. Suman Bala, Smt. Kiran Bala and Smt. Mamta and other legal heirs, nominees, representatives, assignees, administrators, executors etc. will not have any claims, rights, titles or interest, in respect of my above said property as well as any of my immovable property if any, in any manner.*

6. That I further declare that my son Ashok Kumar and Rajeev Kumar will be the beneficiary of my above said property, as mentioned above and my other legal heirs/nominees/representatives/son Davinder Kumar and daughters namely, Madhu, Smt. Suman Bala, Smt. Kiran Bala and Smt. Mamta will not dispute this Will in any manner and will not proceed with the case/proceedings in the court of law, challenging the validity of this Will, in any Court of law, in any circumstances and if so, the said litigations/case etc. will be done at the costs, risks and consequences of the plaintiff/petitioner/challaner party.

7. That at present, I am in sound mind and good health and executing this will, with my own accord.

In witnesses whereof, I have put my hands on the day, month and year mentioned above.

Sd/-
Testator
(Smt. Sita Rani)

Witnesses:-

Sd/-

1. Jai Prakash
S/o Lachi Ram,
R/o B-806, Block B,
Shahbabad, Delhi-110042

Sd/-

2. Sushil Kumar Sharma
S/o Jagdish Chand Sharma
R/o-166A, BlockUU, Pritampura, Delhi.”

3. Notice in the present petition was issued on 20th September, 2016. Citation has been published in the newspaper ‘Statesman’ English Edition and ‘Dainik Jagran’ Hindi Edition. No objections have been received to the Will after publication of the citation. Notices were duly served on the State and the other respondents. Valuation report has been filed by the state.

4. Since none appeared for respondent no. 2, eldest son of the deceased, despite service, he was proceeded *ex-parte* vide order dated 31st July, 2017. Respondent No.3 to 6, daughters of the deceased, have filed their No Objection supported by affidavits.

4. Mr. Ashok Kumar Sharma, son of the deceased has filed an affidavit by way of evidence and the said affidavit has been marked as Ex.PW1/X. It has been stated by the petitioner no. 1 in his affidavit that the Testator was in a sound disposing mind at the time of signing the Will which was duly executed by her in the presence of the witnesses. It is further stated that the Testator expired on 19th March, 2016 at New Delhi leaving behind her last will and testament dated 06th August, 2010. The petitioner has proved the Death Certificate of the Testator as Ex.PW1/3.

5. Mr. Sushil Kumar, second attesting witness has filed his affidavit dated 05th December, 2017. In the said affidavit, he has deposed as under:-

- "i. I say that I am one of the witness of the Will dated 06/8/2010 executed by Late Smt. Sita Rani and I am competent to swear this affidavit.*
- ii. I say that the aforesaid Will was executed by Late smt. Sita Rani in my presence and in the presence of one more Witness i.e. Sh. Jai Prakash, S/o Sh. Lachi Ram, R/o-B-806, Block-B, Sahibabad, Delhi-110042 and at that time the deceased Late Smt. Sita Rani was having full sense, knowledge and understanding of the contents of the Will.*
- iii. I say that the deceased Smt. Sita Rani read and understood the contents of her said Will in Vernacular and admitted before me the correctness of the contents of the said Will.*
- iv. I say that the deceased Smt. Sita Rani signed the Will prior to me in my presence and her signature is similar to her signature in her other documents.*

- v. *I say that the said Will bears my signature as a Witness at point 'B' and the same may be exhibited as Exb.PW3/1.*
- vi. *I say that the testator Late Smt. Sita Rani was in full sense and in good physical health at the time of executing the Will.*
- vii. *I say that the testator Late Smt. Sita Rani read the Will and fully understood its contents and signed the Will before my presence and that this was her last Will."*

6. In view of the above, the Court is satisfied that the petitioners have succeeded in proving that the deceased Smt. Sita Rani, w/o Late Sh. Raja Ram, had executed the Will dated 06th August, 2010 and the said Will was her last will and testament.

7. Consequently, the present petition is allowed. The probate in respect of the Will dated 06th August, 2010 of deceased Smt. Sita Rani, w/o Late Sh. Raja Ram annexed thereto is granted in favour of the petitioners, subject to their furnishing the requisite Court fee in terms of the latest valuation reports and submitting an administrative bond with one surety in accordance with law.

MANMOHAN, J

**DECEMBER 20, 2017
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