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

+ TEST.CAS. 45/2015

RITU WHITTAKER & ANR

..... Petitioners

Through Mr. Arjun Kumar, Advocate for P-1
& 2.

versus

STATE

..... Respondent

Through Mr.Sachin Nahar with Mr.Vaibhav
Asthana, Advocates.

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Date of Decision : 13th November, 2017

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present petition has been filed under Section 276 of the Indian Succession Act for grant of probate of Will dated 09th August, 2008 of deceased Sh. Man Mohan Diddee.

2. In the petition it has been averred that the petitioners are the daughters of the late Sh. Man Mohan Diddee, who expired on 23rd April, 2015 in New Delhi. The deceased is stated to have executed a registered Will dated 09th August, 2008, which was duly attested by Ms. Asha Wangnool and Mr. Vinay Pandey. The will dated 09th August, 2008 executed by the deceased is reproduced hereinbelow:

“W I L L

1. Man Mohan Diddee s/o Late Sh. Murari Dutt Diddee R/o. 1617, Sector B-1, Vasant Kunj, New Delhi – 110 070 aged about 68 years, do hereby make & execute this as my last will & testament with respect to my immovable property set-fourth below:-

- 1. Before proceedings any further & devising my properties, I hereby declare that I am in full enjoyment of perfectly sound senses & I possess a free & disposing mind with which I proceed to execute this will of mine for all references to avoid any misunderstanding after my death in respect of my property amongst my daughters.*
- 2. I have two daughters only & my wife expired at the time of executing this Will. My wife expired on 15th May 2008.*
- 3. I hereby declare that I have no other legal heirs as such no one will be entitled to any share in my immovable property mentioned in this will except my two daughters as mentioned above in Para (2).*
- 4. My two daughters are as under:-*
 - a. Ritu Whittaker W/o Mr. Michael Whittaker residing presently at 13614, Crusader Way, German Town, MD-20874.*
 - b. Nandini Diddee residing presently at 13614, Crusader Way, German Town, MD-20874.*

NOW, I MAKE THE FOLLOWING WILL

- I) Now, I bequeath my self acquired property situated at Flat No. 1617, Sector B-1, Vasant Kunj, New Delhi, in specified share of 50:50 to both of my daughters as mentioned in Para (4) of this will above.*
- ii) None of aforesaid beneficiaries will have the right to sell, mortgage or otherwise dispose of her particular share in said property to any other person during my lifetime.*

In witness whereof, I Man Mohan Diddee, the testator named above, do hereby append my signature herein below in the presence of the witnessed.

Sd/- 9.8.2008
(MAN MOHAN DIDDEE)

Witnesses :

1. *Sd/-*
(Asha Wangnoo)
B/I, 1626
Vasant Kunj
New Delhi

2. *Sd/-*
(Vinay Pandey)
1619, B-1,
Vasant Kunj, New Delhi-70”

3. Notice in the present petition was issued on 15th May, 2015. Citation has been published in the newspaper ‘Statesman’ Delhi Edition. No objections were received to the Will after publication of the citation. Valuation report has been filed by the state.

4. Ms. Nandini Diddee, daughter 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 in her affidavit that the Testator was in a sound disposing mind at the time of signing the Will which was duly executed by him in the presence of the witnesses. It is further stated that the Testator expired on 23rd April, 2015 at New Delhi leaving behind his last will and testament dated 09th August, 2008. The petitioner has proved the Death Certificate of the Testator as Ex.PW1/2.

5. Mr. Vinay Pandey, second attesting witness has filed his affidavit dated 12th May, 2015. In the said affidavit, he has deposed as under:-

“1. *I say that I am one of the subscribing/attesting witnesses to the last Will dated 09.08.2008 of Late Mr. Man Mohan*

Diddee resident of 1617, Sector B-I, Vasant Kunj, New Delhi.

2. *I say that Mr. Man Mohan Diddee executed the said Will on the date thereof by signing his name at the end of the Will, as the same now appears thereon, in my and Ms. Asha Wangnool's presence, the other subscribing to the said Will.*
3. *I say that thereafter, I and Ms. Asha Wangnool attested the Will dated 09.08.2008 and appending our witnessing signatures on the said Will in the presence of Mr. Man Mohan Diddee and each other.*
4. *I say that the testator (Mr. Man Mohan Diddee) appeared to be in good health and appeared to fully understand the effect of his actions and at the time of execution of the said Will appeared to me of sound mind, memory and understanding.*
5. *I say that I have known the testator Mr. Man Mohan Diddee and his family being their neighbor and state that the petitioners are the only issues of the testator.*
6. *I say that as per my knowledge and belief, the Will dated 09.08.2008 is the last will and testament of Late Sh. Man Mohan Diddee and there is no other legatee except the petitioners herein."*

6. In view of the above, the Court is satisfied that the petitioners have succeeded in proving that the deceased Sh. Man Mohan Diddee had executed the Will dated 09th August, 2008 and the said Will was his last will and testament.

7. Consequently, the present petition is allowed. The probate in respect of the Will dated 09th August, 2008 of deceased Sh. Man Mohan Diddee 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

NOVEMBER 13, 2017
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