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

+ TEST.CAS. 47/2015

RAM LAL GANDHI

..... Petitioner

Through: Ms. Kamlesh Mahajan with Mr.
Prince Kumar, Advocates.

versus

STATE

..... Respondent

Through: None

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Date of Decision: 01st September, 2017

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J (Oral):

1. Present petition has been filed by the petitioner under Section 276 of the Indian Succession Act for grant of probate/letters of administration in respect of Will dated 01st January, 2015 of the deceased Smt. Santosh Gandhi, who expired on 07th March, 2015.
2. It has been stated in the petition that Sh. H. N. Gandhi, husband of the deceased, Smt. Santosh Gandhi, expired on 14th July, 2014. It is stated that the deceased neither had any children nor any Class-I legal heirs. It has also been averred in the petition that the petitioner is the brother-in-law and is a Class-II legal heir of the deceased Smt. Santosh Gandhi as he is the real brother of Sh. H. N. Gandhi.

3. The deceased is stated to have executed a Will dated 01st January, 2015 which was duly attested by Mr. Bal Raj Bansal and Ms. Sunita Devi.
4. Notice was issued in the present petition on 18th May, 2015. Citation was published in the English edition of the daily newspaper “The Statesman” and Hindi edition of daily newspaper “Navbharat Times”, both dated 22nd February, 2016. Notice was duly served on the State.
5. Since the other Class-II legal heirs namely, Ms. Usha and Mr. Har Bhagwan Singh despite service, by way of publication in Hindi daily newspaper ‘Rashtriya Sahara’ Delhi edition dated 05th March, 2017 and English daily newspaper ‘Times of India’ Chandigarh edition dated 06th March, 2017, did not file any reply or objection, they were proceeded *ex parte* vide order dated 27th April, 2017.
6. No objections have been received to the Will after publication of the citations. Valuation report has been filed by the state.
7. As regards the petitioner, he has adduced evidence by filing his own affidavit. The affidavit tendered by him in evidence is marked as Ex.PW-1/X. It is reiterated by the petitioner in his affidavit that the Testatrix and her husband, Sh. H. N. Gandhi, had no issue out of their wedlock. It is further stated that the Will was duly executed by the testator in the presence of two attesting witnesses. It is also stated that the Testatrix expired on 07th March, 2015 leaving behind her last will and testament dated 01st January, 2015. The petitioner has proved the Death Certificate of the Testatrix as Ex.PW-1/1.
8. Mr. Bal Raj Bansal, one of the attesting witness, has filed his affidavit dated 13th July, 2017. The relevant portion of the said is reproduced hereinbelow:-

“6. That the deponent submits that Late Smt. Santosh Gandhi desired that she wanted to make a Will in favour of the petitioner since the petitioner was only taking care of her and even helping her financially.

7. That the deponent submits that the Will dated 1st January, 2015 has been executed by Late Smt. Santosh Gandhi in my presence and in the presence of the other attesting witness and the same is Exb.PW-2/1.

8. That the deponent submits that the said Will has been got typed by Late Smt. Santosh Gandhi in Punjabi Language on plain paper in the Ashram premises only.

9. That the deponent submits that first Late Smt. Santosh Gandhi signed the Will at point “A” and thereafter the deponent signed at point “B” and thereafter Smt. Sunita Devi signed the same at point “C”.

10. That the deponent submits that the deponent duly identifies the signatures of Late Smt. Santosh Gandhi on the Will dated 1st January, 2015 at point “A”.

11. That the deponent submits that the Will dated 1st January, 2015 was executed by Late Smt. Santosh Gandhi without any pressure, coercion or influence.

12. That the deponent submits that when the Will dated 1st January, 2015 was made, besides the deponent, the other attesting witness was also present there.”

9. In view of the above, this Court is satisfied that the petitioner has succeeded in proving that the deceased Smt. Santosh Gandhi had executed the Will dated 01st January, 2015 and the said Will was her last Will and testament.

10. Consequently, the present petition is allowed. The letters of administration with a copy of the Will dated 01st January, 2015 annexed thereto is granted in favour of the petitioner, subject to his furnishing the requisite Court fee in terms of the valuation report and submitting an administrative bond with one surety in accordance with law.

MANMOHAN, J

SEPTEMBER 01, 2017
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