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IN THE HIGH COURT OF DELHI AT NEW DELHI

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TEST.CAS. 54/2015

ANISH ARYA

..... Petitioner

Through: Mr. Arunav Tewari, Advocate with
Mr. Ajay Kumar Singh, Advocate.

versus

STATE & ORS

..... Respondents

Through: None.

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Date of Decision : 22nd May, 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/letter of Administration in respect of Will dated 28th May, 2001 of the deceased Mr. Ashok Arya.
2. It has been averred in the petition that the petitioner is the son of the deceased Mr. Ashok Arya, who expired on 28th March, 2014. The deceased is stated to have executed a registered Will dated 28th May, 2001, which was duly attested by Mr. Arvind Arya and Major (Retd.) Suneal Malik, Advocate. The Will dated 28th May 2001 executed by the deceased is reproduced hereinbelow:-

“WILL

THIS is the last will and testament of me, Ashok Kumar Arya s/o Late Sh. Ved Ratan Arya aged about 47 years, presently residing at E-943, Chitaranjan Park, New Delhi-110019.

Life is short and God knows when it may come to an end. In order to avoid unnecessary litigation and disputes regarding my property, I am making this will with my free consent, of my own volition, in sound health and mind without any undue influence or pressure from anybody.

I was married to Smt. Jyoti Arya. Out of my marriage with Smt. Jyoti Arya, two sons namely Anish Arya and Amit Arya were born.

By dint of hard work and my own efforts I earned money. I am educating my children and with myself earned money I acquired the following properties.

- 1. Executive Villa No.C-509 A, Sushant Lok-I, Gurgaon, Haryana*
- 2. Plot No.E-062, Sushant Lok-II, Gurgaon, Haryana*
- 3. Shop No.44, Community Centre, New Friends Colony, New Delhi.*

These properties are my self acquired properties. I am the absolute owner of these properties described above and I have the absolute powers of disposal over the same.

My wife Jyoti Arya has not had cordial relations with me and has deserted me. She has been living separately since 1996 and has not cared to come back to the matrimonial home despite my best efforts to bring her back to matrimonial home. She has not even cared for the welfare of our children and had left both the sons namely Anish Arya and Amit Arya in my custody. It is for this reason that I am not giving any share out of my abovesaid properties to my wife Mrs. Jyoti Arya. I have been looking after my sons Anish Arya and Amit Arya. My wife has not brought up the children and has failed to perform the duties of a mother and a wife in the family.

Now, therefore, with my free consent, own will in sound health

and mind without any influence and pressure. I hereby make this last will and testament that so long as I am alive, I shall remain the absolute owner of the above mentioned property viz.

- 1. Executive Villa No.C-509 A, Sushant Lok-I, Gurgaon, Haryana*
- 2. Plot No.E-062, Sushant Lok-II, Gurgaon, Haryana*
- 3. Shop No.44, Community Centre, New Friends Colony, New Delhi.*

and after my death the entire above described properties with all the rights, title and interest vested in me, shall go and devolve upon my elder son Anish Arya absolutely to the exclusion of my other legal heirs. If my son Anish Arya predeceases me then my aforesaid properties with all rights, title and interest vested in me shall devolve upon my younger son namely Amit Arya absolutely.

I have read the will which has been drafted under my instructions and contents of this will have been understood by me and I have put my signatures on this will. If anybody raises any objection regarding this will the same shall be treated as null and void in the court.

IN WITNESS WHEREOF I have set my hands on this will in the presence of the following witnesses on this 28th day of May 2001.

WITNESS

*Sd/-
TESTATOR*

- 1. Sd/-
Arvind Arya S/o Shri V.R. Arya
B-5/187, Safdarjung Enclave,
New Delhi-110019
P.P. No.A-1255721*
- 2. Sd/-
Major Suneal Malik (Retd.)
Advocate.”*

3. Notice was issued on the present petition on 22nd July, 2015. Citation was also directed to be issued, which came to be published in the English edition of the daily newspaper “The Statesman” and Hindi edition of daily newspaper ‘Jansatta’. No objections have been received to the Will after publication of the citation.

4. Notices were duly served on the State and the other respondents.

5. Respondent No.2, the younger brother of the petitioner, has filed a No Objection supported by an affidavit. The other Class-1 heirs of the deceased namely, Smt. Jyoti Arya is the estranged wife of the deceased and mother of the petitioner and respondent No.2. She has, however, despite service, neither filed any Objection nor any reply. Consequently, this Court has no other option, but to proceed ahead with the matter.

6. As regards the petitioner, he has adduced evidence by filing his own affidavit. The affidavit tendered by him in evidence is marked as Ex.PW1/A. It has been stated by the petitioner in his 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 28th March, 2014 at New Delhi leaving behind his last will and testament dated 28th May, 2001. The petitioner has proved the Death Certificate of the Testator as Ex.PW1/2.

7. Major (Retd.) Suneal Malik, Advocate, one of the attesting witness, has filed his affidavit dated 25th May, 2015. In the said affidavit, he has deposed as under:-

“3. That Sh. Ashok Arya executed a will to which I am the attesting witness.

4. That at the time, I witnessed the said will, Shri Ashok

Arya was perfectly in good state of health and he signed the will in my presence after fully understanding the same and when it was explained and read out to him.

5. *That Shri Ashok Arya had specifically told that he is executing this will, and by executing this will he is disentiing the right of any property to his wife Smt. Jyoti Arya.*

6. *That Shri Ashok Arya had executed this Will with free will and was fully aware about its consequences.”*

8. Major (Retd.) Suneal Malik had also on solemn Oath affirmed as under:-

“I tender in evidence my chief examination affidavit Ex.PW3/X which bears my signature at Points A & B. I had drafted the Will and I was also an attesting witness. My signatures are at point A as scribe of the Will and at point B as an attesting witness. The signatures of the testator are at point C on all the pages. The thumb impressions of the testator are at points C-1. The testator signed prior to me. The other witness Mr. Arvind Arya S/o Mr. V.R. Arya also signed the Will in my presence. His signatures are at point D. The Will is exhibited as Ex.PW1/1.

XXXX by counsel for the respondent.

Respondent no.2 has filed no objection while respondent no.3 has never appeared after service.”

9. In view of the above, this Court is satisfied that the petitioner has succeeded in proving that the deceased Mr. Ashok Arya had executed the Will dated 28th May, 2001 and the said Will was his last Will and testament.

10. Consequently, the present petition is allowed. The letters of administration with a copy of the Will dated 28th May, 2001 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

MAY 22, 2017

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