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

+ TEST.CAS. 78/2016

SHRI PRADEEP AHUJA

Through

..... Petitioner

Mr. Dinesh Garg with Ms. Rachna
Agrawal, Advocates

versus

THE STATE & OTHERS

Through

..... Respondents

Ms. Vasundha Trivedi, Advocate for
R-2 to 7 and 9.

Mr. Sanjiv Batra, Attorney of R-2.

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Date of Decision : 17th August, 2017

CORAM:

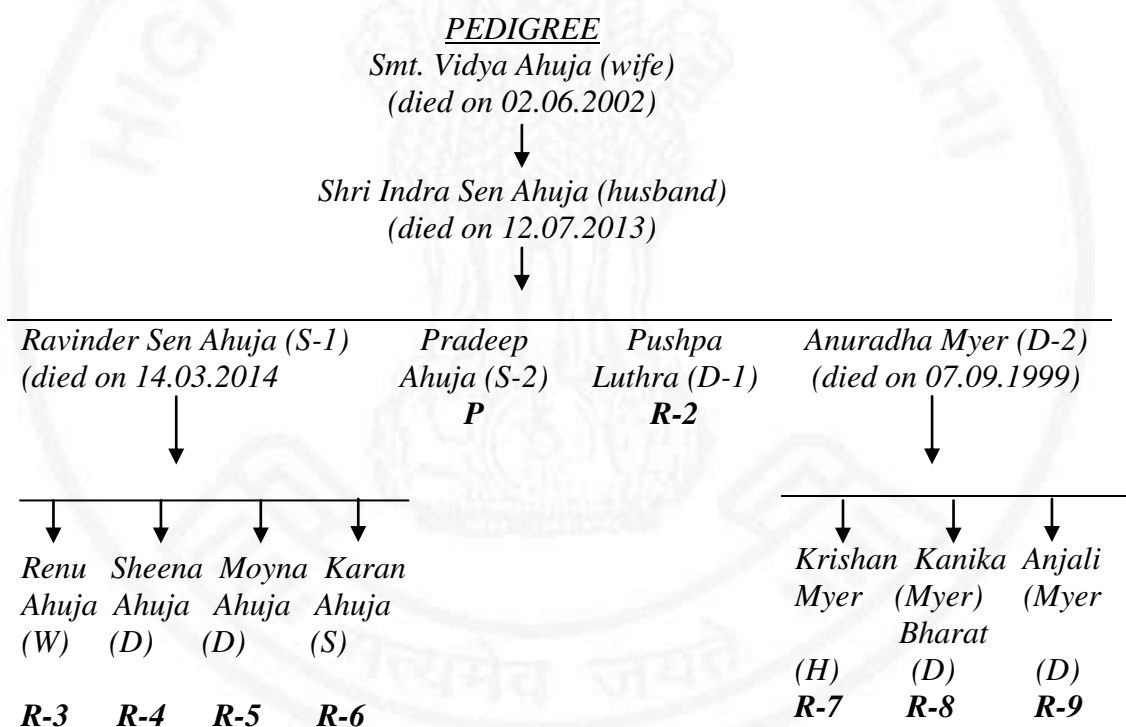
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J (Oral):

1. Present petition has been filed by the petitioner under Section 278 of the Indian Succession Act for grant of letter of Administration in respect of Will dated 29th December, 1989 of the deceased Shri Indra Sen Ahuja.
2. It has been averred in the petition that the petitioner is the son of the deceased Shri Indra Sen Ahuja, who expired on 14th March, 2014. The deceased is stated to have executed a registered Will dated 29th December, 1989, which was duly attested by Shri Mahendra Pratap and Shri Jitender Ahuja, both Advocates.

3. Notice was issued on the present petition on 20th September, 2016. 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 ‘Dainik Jagran’. 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. 8 did not file any objection in spite of service by publication. Consequently, respondent no. 8 is proceeded ex-parte.
6. The Pedigree of the family in question is as under:-



7. Shri Indra Sen Ahuja had bought property No. W-20, Greater Kailash Part-I, New Delhi-110048, measuring 500 sq. yds. in the name of his wife Smt. Vidya Ahuja.
8. On 29th December, 1989, they both executed the reciprocal Will and got the same registered before the Sub-Registrar concerned.

9. Exhibit P/2 is the Will of Shri Indra Sen Ahuja. Exhibit P/1 is the Will of Smt. Vidya Ahuja. Both the Wills are registered documents.

10. Exhibits P/3, P/4 and P/5 are the death certificate of Smt. Vidya Ahuja, Shri Indra Sen Ahuja and Shri Ravinder Sen Ahuja (deceased son) the predecessor-in-interest of respondent Nos. 3 to 6.

11. Both the Wills were attested by the two attesting witnesses namely Shri Mahendra Pratap and Shri Jitender Ahuja, both Advocates. Both the attesting witnesses have since died.

12. In ***Jagdish Prasad Vs. State, 2015 SCC OnLine Del 14461***, the Division Bench of this Court has held that where both attesting witnesses have died, evidence has to be led to prove that the signatures on the Will are that of the executant with further proof that there is attestation in his handwriting by one attesting witness. The relevant portion of the said judgment is as under:-

"12. The legislature was conscious of the fact that a situation may arise where both attesting witnesses have taken the train to the heaven before the testator died or before the beneficiary propounds the Will. The consciousness of the legislature can be found in section 69 of the Indian Evidence Act, 1872, which reads as under:

"69. Proof where no attesting witness found.— If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person."

13. Section 69 of the Indian Evidence Act. 1872, while dealing with a situation where no attesting witness can be found,

requires evidence to be led that the signatures on a document which law requires to be attested by one or more witnesses are that of the executant with further proof that there is attestation in his handwriting by one attesting witness.

14. Law does not envisage that if both attesting witnesses to a Will have died or for some reason are not available, that would be the end of the Will. The way forward has been guided by the legislature under section 69 of the Indian Evidence Act, 1872.

15. In the decision as Babu Singh v. Ram Sahay @ Ram Singh [(2008) 14 SCC 754.] , after noting section 69 of the Indian Evidence Act, 1872, in paragraphs 17 and 18, the Supreme Court observed as under:

“17. It would apply, inter alia, in a case where the attesting witness is either dead or out of the jurisdiction of the Court or kept out of the way by the adverse party or cannot be traced despite diligent search. Only in that event, the Will may be proved in the manner indicated in section 69 i.e., by examining witnesses who were able to prove the handwriting of the testator or executants.

18. Whereas, however, a Will ordinarily must be proved keeping in view the provisions of section 63 of the Succession Act and section 68 of the Act, in the event the ingredients thereof, as noticed hereinbefore, are brought on record, strict proof of execution and attestation stands relaxed. However, signature and handwriting, as contemplated in section 69, must be proved.”

13. Exhibit PW 1/A is the affidavit in evidence of the petitioner, who is also one of the beneficiaries under the Will, who has proved both the Wills as well as the Death Certificates Exhibits P/3, P/4 and P/5. He also identified the signatures of his father and mother and deposed that both the attesting witnesses are dead. He deposed that his father and mother possessed sound disposing mind at the time of execution of the Will. The relevant portion of the petitioner's evidence by way of affidavit is

reproduced hereinbelow:-

"4). That my father Shri Indra Sen Ahuja had executed his last Will and Testament dated 29.12.1989. I had seen him signing and writing and I identify his signatures on the said Will dated 29.12.1989. The said Will was executed in my presence by Shri Indra Sen Ahuja and the same was also attested in my presence by the two attesting witnesses namely Shri Mahender Pratap, Advocate and Shri Jitender Arya, Advocate. I identify their signatures as well on the said Will. Both the said attesting witnesses are since dead. My father possessed sound disposing mind at the time of execution of the said Will. My father had acknowledged the Will dated 29.12.1989, copy of which is placed on record with the petition, to be his last Will and Testament in my presence. Copy of the last Will and Testament dated 29.12.1989 of my father Shri Indra Sen Ahuja is EXHIBIT-P/2."

14. The petitioner (one son) and respondent nos. 3 to 6 (legal heirs of deceased son) are the beneficiaries under the Will.

15. Respondent no. 2 is the daughter and also the Executor of the Will who has filed her affidavit giving No Objection to grant of Letter of Administration/Probate to the petitioner. She has stated that since she had already administered the property in terms of the Will by handing over the same to the petitioner and respondent nos. 3 to 6, she was not willing to file a petition for grant of Letter of Administration. She has affirmed the execution and registration of the Will.

16. Learned counsel for respondent nos. 2 to 7 and 9 states that the said respondents have no objection if the petition is allowed in favour of the petitioner.

17. Shri Indra Sen Ahuja did not leave behind any other legal heirs.

18. Consequently, there is no legal impediment to grant Letter of Administration to the petitioner. Accordingly, the Letter of Administration is granted with the copy of the Will dated 29th December, 1989 signed and executed by Late Shri Indra Sen Ahuja annexed therewith to administer the property No. W-20, Greater Kailash Part-I, New Delhi in terms of the said Will.

AUGUST 17, 2017
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MANMOHAN, J