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

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Date of Decision: 30.11.2017

+ TEST.CAS. 118/2014

SAMIR AGARWAL

..... Petitioner

Through

Mr.Sunil Dutt Dixit, Adv.

versus

THE STATE & ORS

..... Respondents

Through

None

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. The petitioner has filed this present petition under section 276 and 278 of the Indian Succession Act seeking grant of probate in favour of the petitioner with respect to the will dated 28.08.2010 which was executed by Late Smt Madhuri Agarwal (*hereinafter referred to as "the deceased"*) who expired has on 09.10.2010 in New Delhi.

2. It has been averred in the petition that the deceased was the mother of the petitioner, respondent no. 3, 4 and respondent No. 2 was the husband of the deceased.

3. It is stated that the deceased during her lifetime executed a will dated 28.08.2010, which was duly attested by respondent no. 4 and Sh. Chetan A. Jadia.

4. Notices of the petition were duly served to the State and the other respondents. Respondent No. 2 and 4 have filed their No- Objection supported by an affidavit. Only respondent no. 3, namely, Smt. Sujata

Agarwal filed her objections to the petition. The same were also withdrawn by her by way of affidavit dated 20.01.2017. There are hence no contesting respondents in this matter. Evidence was recorded of the petitioner and Sh. Chetan A. Jadia, who is one of the attesting witness to the said will. Arguments have been heard.

5. The petitioner (PW1) tendered his affidavit in evidence wherein he deposed that he is the only son of the deceased. The deceased had expired on 09.10.2010. Her death certificate is marked Ex. PW 1/ 7. The petitioner states that the deceased during her lifetime executed a will dated 28.08.2010 with respect to her movable and immovable properties which was duly witnessed by Respondent no. 4 and Sh. Chetan A. Jadia. The signature of the deceased appearing in the will was also attested by authorized signatory of ICICI Bank, Green Park Extension, New Delhi wherein the deceased had her bank account. Her original will is marked Ex. PW 1/4 and Attestation Certificate issued by ICICI Bank is marked Ex. PW 1/ 5. He further states that the deceased was allotted a two & a half storey building bearing property no. B2/65, Safdarjung Enclave, New Delhi-110029, (*hereinafter referred to as "the said property"*) measuring 200 sq. yards by DDA on registered perpetual lease deed dated 28.03.1966, same is marked Ex. PW 1/1. The said property was later converted into freehold through a registered conveyance deed which was executed on 29.10.1993 (Ex. PW 1/ 2). The property was a self acquired property of the deceased, who was being assessed for Income Tax purposes. Income tax Return for assessment year 2010-11 is marked as Mark A. Valuation Report of the said property is marked Ex. PW 1/6.

6. Sh. Chetan A. Jadia (PW2) tendered his affidavit in evidence wherein

he states that he is a family friend of the petitioner and was also in talking terms with the deceased. He further states that the deceased expired on 09.10.2010 and she executed a will (containing three pages) dated 28.08.2010 where he was the attesting witness. He also states that the deceased was read over the will and had put her signatures voluntarily and out of her own Will in his presence and in the presence of respondent No.4. He has identified the signatures of the deceased on the Will and those of respondent No.4.

7. I have perused the statements of the petitioner and Sh. Chetan A. Jadia. In view of the above, this court is satisfied that the petitioner is the only son of the deceased and has succeeded in proving that the deceased had executed the will dated 28.08.2010 in sound deposing mind. The petitioner has further proved that the said Will was the last Will and testament of late Smt.Madhuri Agarwal. Sh.Chetan A.Jadia, attesting witnesses to the will, has identified the signatures of the deceased in the said will and signatures of himself and respondent no. 4.

8. In this view of the matter, I hold that the petitioner has been successful in proving due execution and attestation of the Will dated 28.08.2010 of Late Smt.Madhuri Agarwal. Since the petitioner is the sole executor/beneficiary of the Will, a probate is issued in favour of the petitioner with respect to the said property, subject to him furnishing the requisite court fees in terms of the valuation report and execution of administration and surety bond.

9. No orders as to cost. Petition is disposed off.

JAYANT NATH, J.

NOVEMBER 30, 2017/ss