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

+ **TEST.CAS. 61/2015**

VEENA RAMTRI Petitioner
Through: **Mr. Shravan Sahny, Advocate.**

versus

STATE & OTHERS Respondents
Through: **Mr. Shekhar Kumar, Advocate for**
respondents No.3 to 5.

% **Date of Decision: 30th 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 276 of the Indian Succession Act for grant of probate in respect of Will dated 3rd April, 2013 of the deceased Ms.Promila Karnani.
2. It has been averred in the petition that the petitioner is the sister of the deceased Ms.Promila Karnani, who expired on 20th April, 2014. The deceased is stated to have executed a Will dated 3rd April, 2013, which was duly attested by Mr. N. Subramaniam and Ms. Sri Charanya. The Will dated 3rd April, 2013 is reproduced hereinunder:-

“WILL

I Promila Karnani, maiden name Promila Ramtri, D/o late Sh.Moolchand Ramtri and late Smt.Lajwanti Ramtri, am making my last Will. I declare that I have not made any other Will till

date.

Of late I have strongly felt the need to make a Will due to my failing health. As I have no children, I felt the need to put on record my thoughts and wishes so that my family members are duly notified of my wishes and desires after I am gone.

I was married to Jai Kishin Karnani on 24th May 1992. Jai lived in USA with his family. I left for USA on 30th April 1993 to join Jai and his family. It was a bad and abusive marriage which did not last even six months. In October 1993 I left the United States on the pretext of attending my brother Pradeep Ramtri's wedding. I would have gone back if Jai had apologized for his behavior. He has never, after my return, made any attempt to rejoin him in the U.S. Jai has never even spoken to me directly or indirectly thereafter. I am not even aware of his existence. Regretfully, I must state that as far as I am concerned he is dead. I have never looked back in life and thanks to the support and love from my family; I have enjoyed life to the fullest, travelled around and discovered this world. I have no children, but have never felt the absence of one. It has been an enjoyable journey so far and I have reached a point that I have no regrets in life. God has been kind to me in more ways than one. Time has been a great healer.

All through this while, my family supported and secured me emotionally; gave me unconditional love, affection and respect.

I have also been lucky in getting to work with reputed companies and good people. This has given me the confidence and the capacity to believe in me and support myself.

My eldest sister, Veena Ramtri, who is unmarried and my mother Lajwanti Ramtri, who passed away on 5th Sept 2011 have always lived together with me at 4/42, II Floor, Old Rajendra Nagar, New Delhi. All my sisters, brother and their families have given me all the love and affection and never made me feel wanting of anything and have always supported me.

I possess properties. My properties are Bank accounts, other investments, LIC policies and in each of these I have assigned a nominee. After my demise the nominees would be entitled to those amounts as their own.

As far as my two immovable properties are concerned-one at 4/42, II Floor, Old Rajendra Nagar, New Delhi, where I now live with my sister Veena and the other at M-490, Ashiana Utsav, Bhiwadi, Rajasthan, which I purchased in 2010- I have not assigned any beneficiary till date.

It would not be out of place here to give a few details about the acquisition of this property at 4/42, II Floor, Old Rajendra Nagar, New Delhi.

My father, Late Shri Moolchand Ramtri belonged to Sindh, Pakistan. At the time of partition, he migrated to India and came to Delhi in 1950 with my mother Late Smt. Lajwanti Ramtri. He got a small property at 1/56, Old Rajendra Nagar, New Delhi as a claim against assets left behind during partition. We are four sisters and one brother. All of us were born in that house. After the death of my father in November 1988, his property at 1/56, Old Rajendra Nagar was sold to a builder, as the family was growing, and we acquired a bigger property at 33/40, I Floor, Old Rajendra Nagar in 1989 and moved there in June 1990. This property at 33/40, I Floor, Old Rajendra Nagar was a joint property in the names of Veena and my younger brother Pradeep Ramtri. This property was ultimately sold off in 1996 and the proceeds were divided between Veena and Pradeep with the full consent of all family members.

Pradeep purchased a flat at 4B/47, III Floor, Old Rajendra Nagar, New Delhi in January 1997 out of his share. Another property was purchased at 4/42, II Floor, Old Rajendra Nagar, New Delhi in May 1998 out of Veena's share. As we were slightly short of funds and it was not possible for anyone else to pick a loan, I applied for a loan of Rs.Four Lakhs at my place of work, Baring Equity Partners Private Ltd., and got the loan. My office

insisted that the sale deed and all the other relevant papers of this property be made in my name. Gradually the loan of Rs.Four Lakhs was paid off by December 2004 and the property documents were returned to me. Since then despite my good intentions and due to other preoccupations, I have been unable to transfer the rights of this property to Veena, my eldest sister, as the major chunk of the amount for purchasing this property was shelled out by her.

The other property at M-490, Ashiana Utsav, Bhiwadi, Rajasthan, is a retirement home which was purchased by me so as to have a good and comfortable place for Veena and me to live when we are not able to look after ourselves post retirement. For buying this property I had taken a loan from HDFC which is partly paid and I am trying my best to pre pay the complete loan. Since this property was purchased for our old age, I want to ensure that in the event of my death, Veena has the option to lead an independent life and not become a burden on our family members who have their own families.

In view of my failing health, I have decided now to make this Will. I want that in the event of my death my both immovable properties should go in favour of my sister, Veena Ramtri till the time she is alive. In case Veena dies before me, these properties would go to my brother Pradeep Ramtri, my sister Madhu Malkani and my youngest sister Bharti Bhatia as equal share. Veena would be free to deal with these properties in any manner she feels.

The HDFC Loan, in the event of my death would have to be repaid by Veena. I am sure that in case she has any financial difficulties in repayment of the loan, my family will take care of the issues and ensure that her interest and the property are fully protected.

I again reiterate that my husband, Jai will have no right or interest in any of my assets and properties. In case I have failed to mention the details of any properties specifically, I make it clear that those properties whether in the form of cash or jewellery or any other valuables would go to Veena.

I am writing this Will in perfect state of mind. My mental faculties are perfect. I have been attending office and have been going about life as usual.

This should be considered my last Will and Testament.”

3. Notice was issued on the present petition on 3rd August, 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 “Navbharat Times”. Since respondent no. 2 is a resident of United States of America, citation was also published in the “The Statesman” international edition as well. Notices were duly served on the State and the other respondents.

4. Respondent no. 2, husband of the Testatrix, despite service has not entered appearance. Consequently, this Hon’ble Court, vide order dated 26th July, 2017 proceeded *ex parte* against the said respondent.

5. The respondents who have entered appearance, being respondent no.3 (brother of the petitioner), respondent no. 4 (sister of the petitioner) and respondent no. 5 (sister of the petitioner) have all filed their No-Objection supported by an affidavit.

6. No objections have been received to the Will after publication of the citation.

7. As regards the petitioner, she has adduced evidence by filing her own affidavit. The affidavit tendered by her in evidence is marked as Ex.PW-1/A. It has been stated by the petitioner in her affidavit that the Testatrix was in a sound disposing mind at the time of signing the Will which was duly executed by her in the presence of the witnesses. It is further stated that the Testatrix expired on 20th April, 2014 at New Delhi leaving behind her last

will and testament dated 3rd April, 2013. The petitioner has proved the Death Certificate of the Testatrix as Ex.PW1/1.

8. Ms. Sri Charanya, one of the attesting witness, has filed her affidavit dated 17th October, 2016. In the said affidavit, she has deposed as under:-

“I, Sri Charanya. W/o Sh. N. Subramaniam, R/o 1309-A, Beverly Park-2, M.G. Road, Gurgaon – 122 002, HARYANA, aged about 48 years, presently at New Delhi, do hereby solemnly affirm and declare as hereunder:-

- 1. That I am one of the attesting witnesses to the last Will dated 03.04.2013 of Late Ms. Promila Karnani.*
- 2. That the said Will was executed by Late Ms. Promila Karnani in my presence and in the presence of the other attesting witness and we both put our signatures on the said will in the presence of the Testator and each other.*
- 3. I further state that the Testator had the mental and physical capacity to understand the contents of the Will which had been read by her before affixing her signature. I am not aware of any other Will executed by the testator, either before or thereafter, and as such I believe the said Will to be her last Will and Testament.”*

(emphasis supplied)

9. In view of the above, this Court is satisfied that the petitioner has succeeded in proving that the deceased Ms.Promila Karnani had executed the Will dated 3rd April, 2013 and the said Will was her last Will and testament.

10. A bare perusal of the will in question shows that the petitioner has been given the powers of the Executor impliedly as she has been given the right to receive the debt due to the estate and also to pay what is due from it.

11. Consequently, the present petition is allowed. The probate in respect of the Will dated 3rd April, 2013 annexed thereto is granted in favour of the petitioner, subject to her furnishing the requisite Court fee in terms of the valuation report.

12. At this stage, learned counsel for the petitioner states that Section 291 of the Indian Succession Act, 1925 (hereinafter referred to as the 'Act') requires furnishing of the administration bond, the object whereof is to secure due and proper administration of the estate of the deceased in which the executors and the administrators have to discharge multifarious duties in respect of the estate. He contends that in the case of a sole beneficiary under the Will, the requirement of furnishing the administration bond under Section 291 of the Act is not mandatory.

13. In fact, a Coordinate Bench of this Court in ***Sanjay Suri Vs. State and Others, 2003 (71) DRJ 446*** has held as under:-

“21. The crux of the matter arising for consideration is whether a sole beneficiary under a Will, which has been duly proved, should be required to execute an administration bond for the administration of an estate, which is bequeathed to him and to which there are no other claimants. It is only on account of statutory bar under Section 222 of the Act, the said sole beneficiary and natural heir not being an executor, is not being granted the probate. It is not in dispute that had he been appointed the executor, there would have been no requirement or insistence on furnishing a surety or administration bond.

22. It would be seen that none of the duties of the Administrator as noticed in the preceding para-16 are required to be performed by a person, who is the sole beneficiary under the Will. It appears to me that the requirement of furnishing of administration bond or surety bond for administration of an estate belonging to oneself is wholly redundant and could not

have been intended to be covered by the statutory provision, namely, Section 291 of the Act.”

14. Keeping in view the aforesaid mandate of law and the fact that the petitioner is the sole beneficiary under the Will, the petitioner is granted exemption from executing an administration bond with sureties.

AUGUST 30, 2017
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MANMOHAN, J